SUPREME COURT OF THE UNITED STATES.

No. 157.

ALFRED C. DOWNS, PLAINTIFF IN ERROR,

vs.

JOSEPH KISSAM.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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JOSEPH KISSAM
vs.
A. C. DOWNS.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and forty-six.

Be it remembered, that heretofore, to wit, on the fifth day of January, A. D. 1842, the following execution of second pluries fieri facias issued from the clerk's office of said court; which execution, together with the marshal's return thereon, is in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Mississippi, set:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements, of James J. Chewning, late of your district, you cause to be made the sum of two thousand three hundred and thirty-six $\frac{22}{100}$ dollars, which Joseph Kissam, lately in our circuit court for the district aforesaid, has recovered herein for his damages which he has sustained by reason of the non-performance of a certain promise and assumption by the said defendant to the said plaintiff lately made, with interest on said sum, at 8 per centum per annum, from the 21st day of November, 1839, until paid; also the sum of $26 66$\frac{2}{3}$, for costs by him about his suit in that behalf expended, whereof the said defendant is convicted, as appears to us of record; and that you have said moneys before the judges of our said court, on the first Monday of May next, to render unto said plaintiff for his damages and costs aforesaid; and have then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of
[L. S.] November, A. D. one thousand eight hundred and forty-one, and in the 66th year of the independence of the United States of America.

Issued the 5th day of January, 1842.

W. H. BROWN, *Clerk*.

(Endorsement.)—The plaintiff requires funds equal to specie.
NORCOM & MASON, *P. Q.*

Marshal's return.

1842, April 14. Levied this execution on the following named negroes, valued as follows, to wit: Nancy and her child, $400; Milley and her child, $500; Viney and her child, $500; Tempey and her child, $400; Mary, $350; Louisa, $400; Juliana, $450; and Charlotte, $500, as the property of James J. Chewning; which said negroes were claimed by Alfred C. Downs, who made oath that the property was his, and gave a bond, according to the statute in such cases made and provided, to try the right of said property, with A. M. Paxton and Andrew J. Paxton as security, which said bond is herewith returned with the execution.

ALEX. K. McCLUNG,
Marshal northern district Mississippi.
By W. D. BRADFORD, *Deputy.*

Affidavit.

THE STATE OF MISSISSIPPI, *Warren county, ss:*

Personally appeared, before the undersigned, Richard Barnet, a justice of the peace in and for the county aforesaid, Alfred C. Downs, who, being sworn, saith that the following negro slaves, to wit, Nancy and child, Tempey and child, Milley and child, Viney and child, Juliana, Charlotte, Mary, and Louisa, which this affiant has been informed and believes have been levied on by the marshal of the northern district of the State of Mississippi by virtue of a writ of fieri facias, which issued from the clerk's office of the United States circuit court for the southern district of Mississippi, in the name of Joseph Kissam, plaintiff, against James J. Chewning, defendant, as the property of Chewning, are the lawful property of him, the said Alfred C. Downs, William H. Benton, William M. Beal, Ferdinand Sims, and Keys & Roberts, of New Orleans, conveyed to said parties, as affiant believes, by a deed of mortgage from James J. Chewning, originally filed and recorded in the parish of Carroll, State of Louisiana, and subsequently, as this affiant believes, duly recorded in the clerk's office of the probate court of Carroll county, State of Mississippi.

A. C. DOWNS.

Subscribed and sworn to, before me, this 19th day of April, A. D. 1842.

R. BARNETT, *J. P.*

Copy of bond.

Know all men, that we, Alfred C. Downs and A. M. Paxton and Andrew J. Paxton, are held and firmly bound, unto Joseph Kissam, in the penal sum of $7,000, seven thousand dollars; for the payment whereof we bind ourselves, our heirs, &c., jointly and severally, firmly by these presents. Sealed with our seals, and dated this 19th day of April, 1842.

The condition of the above obligation is, that whereas a writ of fi. fa.,

against James J. Chewning, in favor of Joseph Kissam, issued from the clerk's office of the United States circuit court of the southern district of the State of Mississippi, on the 5th day of January, 1842, for [the sum of] $2,366 damages, besides costs of suit, and has been, by the marshal of the northern district as aforesaid, levied on the following slaves: Nancy and child, Milley and child, Vina and child, Tempey and child, also Mary, Louisa, Juliana, and Charlotte, valued at $3,500, as the property of James J. Chewning; and whereas said Alfred C. Downs has made claim to said slaves by affidavit, in order to a trial to the right thereto in said court—

Now, if the said Alfred C. Downs shall well and truly pay to said Joseph Kissam all such damages as may be assessed against him by a jury, in case his claim shall not be sustained, or shall appear to have been made for fraudulent purposes or delay, and he will well and truly deliver said negro slaves to the said marshal, if such claim shall be determined against him, then this obligation to be void, else to remain in full force and virtue.

A. C. DOWNS, [SEAL.]
A. M. PAXTON, [SEAL.]
A. J. PAXTON. [SEAL.]

The plaintiff in this cause comes and says, &c., that the slaves levied upon by the marshal, under the fi fa. in this cause, to wit, negroes Nancy and her child, Milley and her child, Viney and her child, Tempey and her child, Mary, Louisa, Juliana, and Charlotte, were at the time, and now are, the property of J. J. Chewning, the defendant in the execution, and not the property of said A. C. Downs and others, and this he is ready to verify; wherefore, &c.

NORCOM & MASON,
For plaintiff.

And the said A. C. Downs, by attorney, comes and says, that the slaves levied upon by the marshal, under the fi. fa. in this cause, to wit, Nancy and her child, Milley and her child, Viney and her child, Tempey and her child, Mary, Louisa, Juliana, and Charlotte, were not, at the time of said levy, nor are they now, the property of the said J. J. Chewning, the defendant in the execution; but were and are the property of the said A. C. Downs and others; and of this he puts himself upon the country, &c.

PAXTON,
Atty. for Downs.

And the plaintiff does the like.

NORCOM & MASON,
For plaintiff.

And afterwards, to wit, at the said November term of the court first aforesaid, to wit, on the 10th day of November, in the year of our Lord one thousand eight hundred and forty-six, until which time this cause was legally continued, came the parties aforesaid, by their respective attorneys, and a jury being called, came to wit, J. R. Enocks, Jessy

Hasty, Wm. White, jr., Henry Long, Silas Steen, S. Prargle, S. Barrow, B. Sutherland, N. Douglass, A. W. McGowan, Jefferson Lowe, and John Simmons, who, being empannelled, tried, and sworn to speak the truth concerning the matters within contained, do say upon their oath, that the negro slaves, to wit, Nancy and her child, Milley and her child, Viney and her child, Tempey and her child, Mary, Louisa, Juliana, and Charlotte, levied upon by virtue of the plaintiff's execution herein, against James J. Chewning, and upon which issue is made up, are the property of the said James J. Chewning, and subject to satisfy said execution, as plaintiff in pleading hath alleged, with the exception of the girl Juliana, who is not subject to said execution, but is the property of the claimant, as he in pleading hath alleged; and they assess the value of said slaves as follows, to wit: Molley at $425, her child $75; Viney at $425, and her child at 75; Nancy at $325, and her child at $75; Mary at $350; Louisa at $400; and Charlotte at $500.

Whereupon the claimant, by his attorney, moved the court for a new trial; because, 1st. The verdict of the jury is contrary to law and the evidence in the cause. 2d. The court erred in permitting the plaintiff to read part only of the deposition of James J. Chewning, witness. 3d. The court erred in permitting evidence to be introduced of the insolvency of Chewning. 4th. The court erred in the instructions given to the jury.

And afterwards, to wit, at the November term first aforesaid, on the 18th day of November, in the year of our Lord one thousand eight hundred and forty-six, on motion by claimant, by attorney, leave is given him to withdraw his motion for a new trial, which is accordingly done; and the following bill of exceptions tendered by defendants and plaintiff.

Bill of Exceptions.

Be it remembered, that on the trial of the above stated cause, at the term aforesaid, the plaintiff, by his attorney, offered in evidence to the jury the deposition of James J. Chewning, taken as stated in the caption thereof; which deposition, with the exhibits therein made and referred to, is in the words and figures following, to wit:

The deposition of J. J. Chewning.

Taken by consent of parties at the law office of W. and A. Yerger, in the city of Jackson, on the 24th day of October, A. D. 1846; which deposition is to be read in behalf of the parties, plaintiff and defendant, in a certain suit now depending and undetermined in the circuit court of the United States, for the southern district of Mississippi, wherein Joseph Kissam is plaintiff, and Alfred C. Downs and others, claimants, are defendants; and the said James J. Chewning, being of lawful age, and first duly sworn to depose the truth, &c., deposeth and saith as follows, to wit:

Int. 1st. By counsel for plaintiff in execution (Joseph Kissam): At the time the marshal levied the execution of Joseph Kissam against your-

self, upon the slaves Nancy and child, Milley and child, Viney and child, Tempey and child, Mary, Louisa, Juliana, and Charlotte, in whose possession were said slaves, to wit, on the 14th April, 1842?

Ans. They were in my possession, and in Bolivar county.

Int. 2d. What was the negro woman Nancy worth at that time; and what was the value of the several other slaves levied on at the same time?

Ans. Nancy was worth $325, and her child $75; Milley was worth $350, and her child $75; Viney was worth $425, and her child $75; Tempey was worth $325, and her child $75; Mary was worth $350; Louisa was worth $400; Juliana was worth $450; Charlotte was worth $500.

Int. 1st. By counsel for claimants. Examine the mortgage from James J. Chewning to the Commercial and Railroad Bank of Vicksburg, and state at what time you executed the same? Which mortgage is marked (A.)

Ans. I executed it on the 31st December, A. D. 1839.

Int. 3d. To what amount were you indebted to said Commercial and Railroad Bank of Vicksburg, at that time?

Ans. I was indebted in the amount named in the said mortgage, to wit, $130,000, and some other amount alone.

Int. 4th. Are any of the slaves levied on by the marshal, as named in the plaintiff's interrogatory 1st, embraced in the mortgage just spoken of by you; if so, name them?

Ans. They are all embraced in said mortgage, except slave Juliana.

Int. 5. Examine the mortgage executed by James J. Chewning to William M. Beal, and state at what time the same was executed, (which mortgage is marked B,) and before whom and when?

Ans. It was executed in the parish of Carroll, Louisiana, before Eli Harris, notary public, on the 7th of March, A D. 1842.

Int. 6. Are any of the slaves levied on by the marshal, as named in the plaintiff's interrogatory 1st, embraced in the mortgage just spoken of by you; if so, name them?

Ans. The following named slaves only are named in said mortgage, to wit, Nancy, Tempey and child, Charlotte, Milley, Louisa, and Mary.

Int. 7. For what amount were you indebted to William M. Beal, at the time of executing said mortgage?

Ans. In the sum of seven thousand four hundred and seventy dollars and $\frac{66}{100}$.

Int. 8. Examine the mortgage executed by J. J. Chewning to James McG. Cuddy, marked C, and state when the same was executed, where, and before whom.

Ans. It was executed on the 13th day of July, 1840, before Eli Harris, notary public in the parish of Carroll, Louisiana.

Int. 9. Are any of the slaves named in the levy of the marshal, as set forth in plaintiff's interrogatory 1st, embraced in the said mortgage?

Ans. The slaves Tempey, Viney, and Charlotte, are the only slaves in the levy embraced in the mortgage.

Int. 10. In what amount were you indebted, at that time, to said James G. McCuddy?

Ans. In the sum of twelve hundred dollars.

Int. 11. Examine the mortgage executed by James J. Chewning to Ferdinand Sims, and state when, where, and before whom the same was executed; (mortgage marked D.)

Ans. It was executed on the 13th July, 1840, in the parish of Carroll, before Eli Harris, notary public.

Int. 12. Are any of the slaves named in the levy of the marshal, as set forth in plaintiff's interrogatory 1st, embraced in said mortgage?

Ans. The slaves Tempe, Nancy, Charlotte, Milly, Louisa, and Mary, are all of said slaves named or embraced in said mortgage.

Int. 13. In what amount were you indebted to said Sims at the date of said mortgage?

Ans. In the sum of forty-eight hundred and seventy-one $\frac{92}{100}$ dollars.

Int. 14. Examine the mortgage executed by James J. Chewning to Alfred C. Downs, and state when, where, and before whom said mortgage was executed, marked (E.)

Ans. It was executed 8th September, 1841, at the parish of Carroll, Louisiana, before Eli Harris, notary public.

Int. 15. Are any of the slaves named in the levy of the marshal, as set forth in plaintiff's interrogatory 1st, embraced in said mortgage?

Ans. They are all so embraced, except the slave Juliana.

Int. 16. What was the consideration for which said mortgage was executed?

Ans. It was to indemnify said Downs, as my security and endorser, as specified in said mortgage.

Int. 17. Where were the slaves in controversy, Juliana excepted, on the 31st December, 1839?

Ans. In Carroll parish, Louisiana.

Int. 18. When were they removed from that parish, by whom removed, and to what place were they taken?

Ans. They were removed about the 20th March, 1842, by myself; a part of them to Carroll county, in this State, and the balance to Bolivar county, in same State.

Int. 19. Where did the mortgagees, Wm. M. Beal, Ferdinand Sims, Alfred C. Downs, and J. McG. Cuddy, reside on the 31st December, 1839, and where have they resided since that period?

Ans. Wm. M. Beal and J. McG. Cuddy resided in New Orleans. Said J. McG. Cuddy died some time in the year 1842. Ferdinand Sims and Alfred C. Downs resided in the county of Warren, in this State; all of whom have continued their said residences ever since, except said Cuddy, who is now dead.

Int. 20. Under what circumstances were the slaves in controversy (Juliana excepted) removed from Carroll parish, Louisiana, to Bolivar and Carroll counties, Mississippi?

Ans. Some time in the year 1841, I sold the tracts of land in Carroll parish, Louisiana, and with the view of making the labor of said slaves more valuable, I removed them on two other unimproved tracts that I owned in Carroll and Bolivar counties, in this State. I did not consult either of the mortgagees with regard to the removal of the slaves to this State; nor am I aware that they ever approved of the removal of the negroes, until some time subsequent. Intending to act in good faith, and pay the amount of the four mortgages executed in Louisiana, I procured from the parish judge copies of the said mortgages, certified by a notary public, as also the governor of the State of Louisiana, and filed them for record in Carroll county, Mississippi, on the 26th of March, 1842. I had not time to have them recorded in Bolivar county before the levy was made by the marshal. In order to get to the county of Bolivar, it was necessary to travel by water, down the Yazoo and up the Mississippi, 400 miles, in consequence of the high water in the swamp; and the mortgages had to be brought to Jackson, about the first of May, 1842, in the trial of the right of property.

Int. 21. State what you know in regard to the title of the slave Juliana.

Ans. She was not at the time of the levy, nor was ever, my property. She belonged to A. C. Downs, who received the proceeds of her labor.

Int. 22. Why did you not get and bring the four original mortgages executed in Louisiana?

Ans. The parish judge gave me copies only, retaining the originals in his possession.

Int. 23. Who has controlled the crops of the Shell Bluff plantation, and received the profits thereof, since the year 1841?

Ans. The crops, with the exception of the expenses of the place, have been controlled annually by A. C. Downs, and appropriated to the payment of his liabilities on my account.

Int. 24. State the name of the plantation upon which the slaves in controversy were when levied upon.

Ans. Shell Bluff plantation, then in Sun Flower, now in Bolivar county, Mississippi.

Int. 25. Do you know the plaintiff in execution in this case?

Ans. I do not know him. Mr. Norcom told me he lived in New York, and I wrote to him there, but never received an answer.

Interrogatories resumed by counsel for plaintiff.

Int. 1. Where were the slaves in controversy on the 21st day of November, 1839?

Ans. In Carroll parish, Louisiana, except slave Juliana, and the infants of them since born.

Int. 2. When did you first obtain possession of Juliana, and how long since have you so retained possession of her?

Ans. I took possession of her about January, 1842, and have retained possession of her ever since.

Int. 3. Under what circumstances did you take possession of her, and upon what terms have you since held her?

Ans. A. C. Downs is part owner of the plantation with myself, and being owner of this slave, placed her, with others, on the plantation, and has since received, as before stated, *received* the proceeds of her labor.

Int. 4. You have stated that the tract of land, which is embraced in this mortgage to Sims, situated in Louisiana, has been sold; to whom, and for what price, was it sold, and what has become of the proceeds thereof?

Ans. It was sold, some time in the year 1841, to William Bailey, for the sum of ten thousand dollars, for which he assumed a debt of $2,500 to the Union Bank of Louisiana, which I had previously assumed, upon the purchase by myself of said land, and a debt to Horace Prentiss, assignee of Long, of about $5,000, and other debts due by me, to make the amount of the purchase money, say about $2,500, due to Peyroux, Rinardy & Co. George M. Long and myself originally purchased said land of ——— Harris, and I purchased out Long's interest afterwards.

Int. 5. Did Bailey assume to pay, and has he since paid, any part of the sum named in the mortgage to Sims?

Ans I received from Mr. Bailey a note for about $4,000 for the hire of the negroes named in the mortgage with others to Sims, which I hypothecated with Ferdinand Sims for the amount due on the mortgage. Bailey has been sued by Sims on the note, and judgment obtained against him; but the money has not been made, or any part thereof.

Int. 6. What part of the debt due to Sims, in the said mortgage, has been paid by you, and when?

Ans. I have not the date of the payments, but they amounted to about $1,400.

Int. 7. How much of the amount specified as due to James McG. Cuddy, and for which the mortgage was given as aforesaid, to whom, and when paid?

Ans. I paid Cuddy $600 in 1843, or to his nephew and representative, Cuddy, of the firm of Downs, Cuddy & Co., New Orleans.

Int. 8. Who has paid the remainder?

Ans. A. C. Downs has paid it, as he informed me, and I am his debtor for it.

Int. 9. What part of the money due to Wm. M. Beal, as mentioned in the mortgage, has been paid, who to, how and when paid?

Ans. I have paid about $3,500 in the years 1843, '4, and '5; Downs has paid about $2,500, paid in 1845, and a balance is yet due to Beal, or his assignee, of about $1,400.

Int. 10. How many slaves, being working hands, were there included in the mortgage to the Commercial [and] R. R. Bank of Vicksburg, heretofore referred to?

Ans. About fifty-five or six.

Int. 11. How many of these hands have since died?

Ans. About ten have died since.

Int. 12. Will not the children who have grown up since make the number equal to the original number of working hands?

Ans. They will not; they will not supply by one-fourth the deficit of number.

Int. 13. How many bales of cotton have you annually made with these hands, in the years 1842, '3, '4, '5 and '6? State the number for each year.

Ans. In 1842, 450; in '43, 275; in '44, 310; in '45, 280; and this, (1846,) 250 bales, as I suppose.

Int. 14. What did those crops respectively sell for?

Ans. I have not the account of sales before me, but the crop of 1842 sold for about $8,000; the crop of 1843 for about $5,000, the crop of 1844 for about $5,000, the crop for 1845 for about $6,500, and the crop for 1846 has not been sold.

Int. 15. Who sold the respective crops aforesaid?

Ans. I believe Wm. Laughlin & Co. sold the first crop, and Robinson & Downs and Downs, Cuddy & Co. have sold the remaining crops.

Int. 16. Who received the proceeds of these crops?

Ans. They have been applied to the payment of liabilities incurred by A. C. Downs, on my account.

Int. 17. Was Mr. Downs liable on your account for any other sums than those set out in the several mortgages mentioned; and if so, upon what debts, and how much?

Ans. He was liable for a debt due the Planters' Bank of Mississippi, due by me for about $12 or $1,500, and further liable to the Commercial and Railroad Bank of Vicksburg, for a debt due by me for about $6 or $7,000.

Int. 18. Which of the debts for which said Downs was liable, due by you, have been paid by him?

Ans. Twenty-five hundred dollars to Beal, $600 to Cuddy, 6,000 to Com'l R. R. Bank of Vicksburg, and also the amount of the debt of $6,000 mentioned in the mortgage to said Downs, which debt when paid by Downs was held by the Com'l and R. R. Bank of Vicksburg; which amounts have been paid, except about $1,400 yet due to the said Comm'l and Railroad Bank of Vicksburg.

Int. 19. At what time was said payments made by said Downs to said Com'l R. R. Bank of Vicksburg, and how?

Ans. In 1841 certain property of mine was sold under execution sale in Warren county, which property was embraced in the mortgage to the Commercial and R. R. Bank, of junior date to the execution, and Downs and the bank had an agreement, as I understood, that when he (Downs) purchased at said sale, the bank was to receive said property at a price afterwards to be agreed upon, in liquidation of the debt of myself, as far as it would go; and with said property so purchased he did pay and discharge my debt to said bank, leaving a balance of about $115,000 or $120,000 still due the bank; about 18 months since, the property was received by the bank at about $65,000, and at the same time I paid the

said bank $15,000, which left the balance above set forth due upon said mortgage, and other liabilities of myself to said bank, for which Downs was liable.

Int. 20. Under what executions was said purchase of said Downs made, and what amount did Downs bid for the property?

Ans. I do not know.

Int. 21. What was your pecuniary condition at the time of the execution of said mortgages by you; were you in failing circumstances—solvent or insolvent?

Ans. I considered myself solvent, and that with my means I would be able to pay my debts. I had *had* two large plantations, and an undivided interest in another, fifty or sixty hands, a large quantity of real estate in Vicksburg, wild lands, &c., and about two or three hundred thousand dollars of debts due me.

Int. by counsel for claimant.

Have any of the slaves levied upon died since said levy? If so, name them.

Ans. Yes; Nancy, Milly's child, and Tempey's child.

Int. by counsel for plaintiff.

What is the liability of said A. C. Downs as your security, as admr. of Thomas D. Downs, deceased, on the land referred to in the mortgage?

Ans. I am sued with the security on said debt, and judgment has been recovered on said bond in some cases, and said Downs is still liable for me for a balance of about $5,200, that being the amount of my liability on said bond; the remainder having been paid.

JAMES J. CHEWNING.

I, L. V. Dixon, commissioner of said circuit court, do certify, that the foregoing deposition was taken at the time and place mentioned in the caption thereof; and that the same was taken down and reduced to writing in the presence of the witness, and by him signed in my presence.

Given under my hand, this 24th Oct., 1846.

L. V. DIXON, *Com'r, &c.*

Exhibit A.

THE STATE OF MISSISSIPPI, *Warren county:*

This indenture, made and entered into this 31st day of December, one thousand eight hundred and thirty-nine, between James J. Chewning, of the State and county aforesaid, of the first part, and the president, directors, and company of the Commercial and Railroad Bank of Vicksburg, of the second part, a corporation duly and legally incorporated by the signature of the State of Mississippi, under that name and style, witnesseth: That, for and in consideration of the sum of ten dollars, in hand paid to the said James J. Chewning this day, by the parties of the second part, the receipt of which is hereby acknowledged, and for divers other good causes and considerations hereinafter set forth, the said James J. Chewning hath bargained, sold, and conveyed, and

by these presents doth bargain, sell, convey, and deliver, to the said parties of the second part, one undivided moiety of a tract or parcel of land, situate, lying, and being within the State of Louisiana, and parish of Carroll, known and designated as the south half of lot number sixty-seven, all of lot number sixty-eight, all of lots number sixty-nine and seventy, in township number twenty-two, in range thirteen east, the north half of lot number one, in township number twenty-one, range thirteen east; also, a back concession of one-eighth of one section, lying immediately west of and back of the said land just before described, containing in all, by estimation, eight hundred and fifteen acres; also, one undivided half of the following slaves, now on the land above named, in Louisiana, to wit, Lewis, aged about thirty years; John, fifty years; Jack, twenty-eight years; Rhodes, aged twenty-seven years; Isaac, aged eighteen years; George, aged nineteen years; Jim, aged about forty years; Spencer, aged about seventeen years; Anderson, aged eighteen years; Giles, aged fourteen years; Burrill, aged thirty years; Jesse, aged forty years; Coleman, aged thirty years; Tempe, aged twenty-five years; Matilda, aged eighteen years; Elizabeth, aged eighteen years; Nancy, aged seventeen years; Tempe, about forty years old; Lucy, forty years; Charlotte, twenty years; Celia, about forty-five years; Milley, about thirty years; Agnes, about forty-five years; China, about twenty-two years; Laura, twelve years old; Mary, twelve years old; Nancy, thirty-four years old; Violet, thirty-one years old; Jack, two years old; Elsey, thirteen years old; Margaret, about seven years old; Siney, about five years old; Caroline, about three years; Harriet, two years old; Hest, or Hester, about three years old; Kitty, about sixteen months old; *Kitty, about sixteen months old;* and boy Claibourn, about four months old; and also the following tracts or parcels of land, situate, lying, and being within the State of Mississippi, to wit, one undivided moiety of a tract of land, lying and being in the county of Carroll, owned jointly with one John S. Gooch, known according to the plat of said land, in the United States land office, as section number sixteen, the south half of the northwest quarter of section number nine, the east half of the northwest quarter, and the east half of the southwest quarter, of section ten, all of which *lies* in township number eighteen, of range two east, and containing, by estimate, thirteen hundred and sixty acres; also two lots of land, lying and being in the city of Vicksburg, State of Mississippi, and county of Warren, known as lots number sixty-five and sixty-six, in square number eighteen, according to a plat known as Vick's enlargement, of the town of Vicksburg; also two other lots of land, known as lots number fifty-five and fifty-six, in square numbered , as designated in said plat of Vick's enlargement; also the undivided moiety of a lot of land, designated as lot numbered one hundred and fifty-one, in square twenty-three, fronting on Second East street seventy-three feet nine inches, and running back one hundred and forty-seven feet six inches; also one undivided moiety of another lot of land, situated in said city of Vicksburg, and designated on the plat thereof as lot number thirteen, in square number nineteen, beginning at a point thirty-

two feet from the southwest corner of said lot, running east, on First East street, thirty-two feet, and extending back, at right angles, one hundred feet; also one undivided moiety of a lot of land, lying in the city of Vicksburg, known as fractional lot, numbered one hundred and fifty-four, in square number twenty-three, lying on the north side of Open Woods street, bounded on the west by lot numbered one hundred and fifty-three, and on the north by lot numbered one hundred and fifty-one; also that certain lot, lying in the city of Vicksburg, known as the north half of lot numbered two hundred and eighty-nine, in square number sixty, containing by estimate a quarter of an acre; also the following negro slaves, now in Bolivar county, and State of Mississippi, on the plantation purchased by the said James J. Chewning, at sheriff's sale of W. H. Sims, to wit, Jasper, aged about twenty-eight years; his wife Harriet, aged about twenty-seven years; boy Jim, about ten years; Loyd, about twenty years old; Agnes, about eighteen years old; Thomas, about twenty years old; Maletty, about nineteen years old; Edmund, about thirty years old; Kitty, about twenty-seven years old; Caroline, about five years old; Jim, about eighteen years old; Lucy, about twenty years old; Billy, about thirty-five years old; Letitia, about twenty-five years old; Sylva, about twenty-five years; Lucy Ann, about twenty-two years old; Madison, about eight years old; Fleming, eighteen years old; Morton, fifteen years old; Jackson, fifteen years old; Sarah, eighteen years old; Susan, fourteen years old; Fanny, twenty years old; Sally, twenty years old; Morgan, twenty-eight years old; Nancy, twenty-eight years old; Anne, twenty years old; Alfred, fifteen years old; Lewis, ten years old; and Sam, about twenty-five years old; Napoleon, fifteen years old; Sampson, fifteen years old; also the following lots or parcels of land, situate, lying, and being in the county of Bolivar, and State of Mississippi, conveyed by Francis Patterson, as sheriff of said county, by deed bearing date twenty-first day of October, eighteen hundred and thirty-nine, to wit, section number twenty; also lots number ten, eleven, twelve, and thirteen, in section numbered twenty-three; also lots numbered three, four, and five, in section number twenty-seven; also southwest quarter of section number twenty-two, east half of southwest quarter of section number twenty-one; all lying and being in township eighteen, in range number west, in the said county of Bolivar, containing in all fifteen hundred and seventy acres, and a fraction of an acre; also three acres of land in the county of Warren, and State of Mississippi, near the Vicksburg and Jackson Railroad, described as follows: beginning at a post, in sectional line dividing sections nineteen and twenty-one, three degrees twenty-eight chains, east of the northeast corner of section thirty-four, (34,) on north side of the railroad; thence north, ten degrees twenty-three chains, to a post on the north side of bayou, and on the north side of a boundary of a road laid off by S. Howard; thence up said bayou, three degrees one chain, to a post in said bayou, and in the line of said road; thence with said railroad, south eight and one half chains west, three degrees 04 chains, to the beginning, as will more fully appear by deed from Wm. M. Gwin, marshal, to James I. Chewning, recorded in Warren county; also one

undivided moiety of lots No. twenty-seven and twenty-eight, in square number two, in the lower division of the plat of lots heretofore laid off by the Vicksburg Cotton Press Company, on the corner of Levee and Henry streets, as will appear by reference to deed from J. P. Harrison, trustee, to Bibby and Chewning; also a full fee simple interest in and to lot number one hundred and twenty, in square number twenty, as laid down in the original plat of the city of Vicksburg, sold by sheriff Morris as the property of Watson Flowers, to the said James J. Chewning; also lots seven and eight, in square three, in Springfield, fronting on Farmer's, Randolph, and Poplar street, as will more fully appear by reference to a plat of lots laid off by Jno. G. Parham, north of and adjacent to the city of Vicksburg; also one house and lot in the town of Clinton, Hinds county, Mississippi, being the only lot owned by the said J. J. Chewning, in Clinton; which lot was conveyed by Moses Hall to Smith, and by Smith to James J. Chewning; also all my right, title, and interest in and to the town of Pine Bluff, Arkansas, being an undivided fourth thereof, owned in conjunction with William M. Pinckard, Henry S. Dawson, and A. H. Davis, as will more fully appear by reference to a deed from A. H. Davis to James J. Chewning, W. M. Pinckard, and H. S. Davis.

Also the following described lands, owned solely by James J. Chewning, lying and being in the county of Crawford, and State of Arkansas, described more particularly as follows, being northeast fractional part of northeast fractional quarter of section eleven, township north, range twenty-nine west, containing forty acres $\frac{8}{100}$ acre. Also the east half of the northeast quarter of section twelve, and the east half of the southeast quarter of section ten, township ten north, range twenty-nine, containing one hundred and sixty acres, conveyed to said Chewning by Curry Barnett and wife. Also northwest quarter of southwest quarter of section seventeen, township ten north, range twenty-three west, containing forty acres, conveyed to said Chewning by Chas. Whitson and wife. Also the eighty acres conveyed to said Chewning by deed from John Whitson. Also the west half of the southeast of section six, township ten, range twenty-three west, conveyed by the said Wm. Whitson to the said J. J. Chewning, containing eighty acres. Also northwest quarter of northeast quarter of section seven, township ten north, range twenty west, containing forty acres, conveyed by John W. Whitson to said James J. Chewning. Also three hundred and twenty-acres in said county, conveyed to the said James J. Chewning by W. P. Moore and wife, reference to which will describe more particularly said land. Also the northwest quarter of the northeast quarter of section number seven, in township number ten north, of range number twenty-eight west, containing forty acres, and the west half of the northeast quarter of section number six, in township number ten north, of range twenty-eight west, containing seventy-eight acres $\frac{78}{100}$. Also the west half of the southeast quarter of section number six, in township number ten north, of range twenty-eight west, containing eighty acres. Also the following described body of land, situate, lying, and being in the State of Mississippi and *and* county of Washington, and known and de-

scribed more particularly as follows, to wit, the whole of section twenty-seven, of township seventeen, of range four west, containing six hundred and forty acres one hundredth of an acre. Also all that part of section twenty-eight, of township seventeen, of range west, which is situated and lies on the eastern side of the bayou or lake, running north through said township, which lake or bayou is known or designated as Dawson's lake. Also all the southern half of that portion of section twenty-one, of township , of range four west, which is situated on the eastern side of the bayou or lake hereinbefore described. Also all that portion of section thirty-three, township seventeen, of range four west, which is situated and lies on the eastern side of the bayou hereinbefore described; all of which said lands at Mount Salus, Mississippi, land office, in the name of James Saul, containing in all about fifteen hundred and seventy acres. Also the following described lands, situate, lying, and being in the county of Yazoo and State of Mississippi, being the north half and the east half southwest quarter, and west half southwest quarter, of section twenty-nine, of township number ten, of range number four west, containing one hundred and seventy-eight $\frac{44}{100}$ acres. Also lot number four, of section number thirty-three, of township number eleven, of range number four west, containing seven acres $\frac{22}{100}$. Also lot number five, section number twenty-eight, township number ten, of range number four west, containing one hundred and ten eighty-seven hundredths acres, a description of which lands will be seen by reference to certificates numbered 22,371, 22,372, 22,373. Also the following lot of land, to wit, one undivided thereof, known and described on the original plat of the city of Vicksburg as lot two hundred and thirty-seven, in square number thirty-eight, containing one acre. Also the following described lot or parcel of land, being one undivided moiety thereof, lying near the depot of the Vicksburg and Jackson railroad in Pincardia, known and described more particularly as lots number sixty-one and sixty-two, in square number nine, fronting on Mulberry and Madison streets. Also the following five negro slaves, in the city of Vicksburg: Tom, aged twenty-five; Harriet, aged twenty-four; Kitty, aged ; and Mary and Madison. And the said James J. Chewning here conveys, to the said parties of the second part, all the stock and farming utensils on the plantation hereinbefore described, in the parish of Carroll, in the State of Louisiana, and on the plantation in the county of Bolivar and State of Mississippi. To have and to hold to the said parties of the secont part, and their successors in office and assigns forever; and the said James J. Chewning hereby covenants and agrees, to and with the parties of the second part, that he will, and his heirs shall, forever warrant and defend the title to the above lots of land in fee simple, against the claims of all persons whatsoever; and that slaves hereby named are slaves for life, and as such will warrant and defend the title to them against the claims of all persons whatsoever.

Now, the condition of the above conveyance is such, that whereas the said James J. Chewning is justly indebted, to the parties of the second part, in the sum of one hundred and thirty thousand dollars, as

evidenced by his promissory note for the sum of one hundred and thirty thousand dollars, bearing date on the 31st day of December, one thousand eight hundred and thirty-nine, and due and payable twelve months after the date thereof, at the Commercial and Railroad Bank of Vicksburg, to the parties of the second part. Now, should the said James J. Chewning well and truly pay to the said parties of the second part, on the thirty-first day of December, one thousand eight hundred and forty, the sum of one hundred and thirty thousand dollars, then this conveyance to be null and void, otherwise to remain in full force and effect. It is further covenanted and agreed, by the parties hereto, that should the said James J. Chewning well and truly pay, on the 31st of December, eighteen hundred and forty-one, *pay* the sum of thirteen thousand eight hundred and eighty-eight dollars $\frac{88}{100}$ on said note, with *with* all interest due upon said last named sum, and shall on the thirty-first December, A. D. 1842, pay the further sum of thirteen thousand eight hundred [and] eighty-eight dollars $\frac{88}{100}$, all legal interest due on said last named sum, and so on continuing to pay, on the 31st day of December of each and every year thereafter, the sum of thirteen thousand eight hundred and eighty-eight dollars $\frac{88}{100}$, until the entire sum of one hundred and thirty thousand dollars shall have been fully paid and discharged, he, the said Chewning, paying said instalments annually and punctually with all the interest on said instalments which may have accrued as they respectively fall due, there being in all one instalment of five thousand dollars, and nine annual instalments of thirteen thousand eight hundred and eighty-eight dollars $\frac{88}{100}$, falling due respectively on the 31st December of each and every year, then the said parties of the second part agree to be herewith content and satisfied, and not to proceed at law in foreclosure of this mortgage, unless default be made in some of the payments aforesaid. It is further expressly agreed, between the parties, that should there be default in any one of the payments above specified, at the respective maturities, then shall the whole amount be due. It is further agreed, by the parties hereto, that said James J. Chewning may retain the possession of said lands and slaves, and receive and appropriate to his own use the rents and profits arising therefrom, until default be made in some one of the payments aforesaid. And it is further agreed and understood, between the parties of the first and second part, that the said James J. Chewning shall not remove any of the negroes from the State of Mississippi, without first procuring the consent of the parties of the second, until this mortgage shall have been fully discharged and satisfied.

In testimony whereof the said party of the first part, and William H. Benton, president of the said corporation, and representative of the said parties of the second part, have hereunto set their hands and seals in Vicksburg, and State of Mississippi.

JAS. J. CHEWNING, [SEAL.]
W. H. BENTON, *Pres't.* [SEAL.]

Test: A. M. PAXTON,
H. M. JENKINS,
WALTER PECK.

THE STATE OF MISSISSIPPI, *Warren county:*

Personally appeared before me, William L. Sharkey, chief justice of the high court of errors and appeals in and for the State of Mississippi, James J. Chewning and William H. Benton, as president of the aforenamed bank, who acknowledged that they signed, sealed, and delivered the foregoing mortgage, as their act and deed, on the day and year and for the purposes therein set forth and mentioned.

Given under my hand and seal this first day of January, 1840.

W. L. SHARKEY. [SEAL.]

By Alexander G. McNutt, governor of the State of Mississippi:

To all who shall see these presents, greeting:

Be it known, that William L. Sharkey, whose name is subscribed to the annexed certificate, was, on the first day of January, A. D. 1840, chief justice of the high court of errors and appeals in the State of Mississippi; that his attestation to the above certificate is in due form of law, and made by the proper officer, and that full faith and credit are due to all his official acts.

[L. S.] In testimony whereof I have caused the great seal of the State to be hereunto affixed.

Given under my hand, at the city of Jackson, the second day of January, A. D. 1840.

By the Governor: A. G. McNUTT.

THOMAS B. WOODWARD,
Secretary of State.

THE STATE OF MISSISSIPPI, *Sunflower county, ss:*

I, John C. Hicks, clerk of the probate court of said county, do hereby certify, that the foregoing mortgage was filed in my office for record on the 23d day of January, A. D. 1845, and that the same, together with the annexed certificates, are duly recorded in record book A, on pages 65, 66, 67, 68, 69, 70, and 71.

Given under my hand and seal of office this 26th day of April, A. D. 1845.

JOHN C. HICKS, *Clerk.*

I, Felix Bosworth, parish judge in and for the parish of Carroll, in the State of Louisiana, do certify the within mortgage to be recorded in my office, in mortgage book (B,) folio 76.

Given under my hand and seal of office this 16th day of January, 1840.

FELIX BOSWORTH,
Parish judge.

Exhibit (B.)

Be it known and remembered, that before me, Eli Harris, notary public, duly commissioned and sworn, residing at Providence, in the parish of Carroll, and State of Louisiana, on this seventh day of March,

in the year of our Lord one thousand eight hundred and forty-two, personally came and appeared James J. Chewning, an inhabitant of the city of Vicksburg, in the State of Mississippi, who declared and acknowledged that he was justly and truly indebted unto William M. Beal, of the city of New Orleans, in this State, in the sum of seven thousand four hundred and seventy dollars and sixty cents, and for the payment of which he, the said appearer, has, on the twentieth day of January, eighteen hundred and forty-two—1st, drawn his draft, or bill of exchange, on Messrs. Keys and Roberts, domiciliated in the said city of New Orleans, for the sum of twenty-five hundred dollars, payable on the first day of January next, 1843, to the order of Alfred C. Downs, of Vicksburg, in the State of Mississippi, and which bill of exchange has been accepted by the said Keys and Roberts, and endorsed by the said A. C. Downs, who has stated that he will acknowledge notice at Vicksburg, it being the place where said bill of exchange was drawn, and signed by the said James J. Chewning, on the 20th day of January, 1842, for two thousand five hundred dollars, as aforesaid. 2d. A note of hand, drawn and executed by the said James J. Chewning and A. C. Downs, jointly and severally, at Vicksburg, in the State of Mississippi, on the twentieth day of January, eighteen hundred and forty-two, for the sum of twenty-three hundred and ninety-five dollars and forty-six cents, payable on the first day of January, in the year eighteen hundred and forty-four, (1844,) to the order of William M. Beal, at the City Bank of New Orleans, with interest at the rate of eight per cent. per annum after maturity. 3d. Another note drawn by the said James J. Chewning and the said A. C. Downs, jointly and severally, at Vicksburg, in the State of Mississippi, on the twentieth day of January, eighteen hundred and forty-two, for the sum of twenty-five hundred and seventy dollars and twenty cents, payable on the first day of January, in the year eighteen hundred and forty-five, (1845,) to the order of William M. Beal, at the City Bank of New Orleans, with interest at the rate of eight per cent. per annum after maturity. And all of which notes, with the said bill of exchange, *has* this day been marked, "ne varietur," by me, notary, to identify the said notes and bill of exchange with this act.

And now, in order to secure the payment of said bill of exchange, and the said two notes of hand, when the same shall become due and payable, according to their tenor, and according to the true intent and meaning of this act, the said James J. Chewning does hereby mortgage and hypothecate, unto the said William M. Beal, and to Keys and Roberts, commission merchants of New Orleans, the acceptors of said bill of exchange, and to Alfred C. Downs, the endorser of said bill of exchange, and the joint drawer of the said two notes of hand, all the following described and named negro slaves, to wit: Lewis, aged about 38 years, John 50, Jack 28, Tom 18, Rhodes 27, Jim 40, Spencer 17, Granderson 18, Burrell 32, George 21, Bowen 30, Tempe 25, Matilda 18, Elizabeth 18, and child, Nancy 17, Tempe 40, and children, Lucy 40, Charlotte 20, and child, Celia 45, and child, Milley 30,

William 4, China 22, and child, Louisa 12, Mary 12, Manah 20, Nancy 34, Jake 2, Elsey 15, Margaret 8, Sindy 5, Caroline 3, Harriet 2, Kitty 3, Catharine 4, Isaac 22, Susan 20, and child. And the said James J. Chewning does hereby furthermore promise and bind himself that he will not sell, donate, mortgage, or deteriorate the above described property to the prejudice of *of* this mortgage.

This act of mortgage is accepted by James N. T. Richardson, agent and attorney in fact for the said William M. Beal, by letter of attorney, herewith filed for reference; and he hereby waives the certificate required by article 3328 of the civil code of this State.

Thus done in my office, the day and year first above written, in presence of George W. Gant and Franklin D. Galloway, witnesses residing in said parish of Carroll, who have signed this act with the parties and me, the said notary.

JAS. J. CHEWNING,
WILLIAM M. BEAL,
By J. N. T. RICHARDSON,
His attorney in fact.
KEYS and ROBERTS, and
A. C. DOWNS,
By J. N. T. RICHARDSON,
Their attorney in fact.

Attest:
G. W. GANT,
T. D. GALLOWAY.

ELI HARRIS, *Notary Public.*

I certify the foregoing to be a true copy of the original extract on my current register.

[L. S.] Given under my hand and seal of office, this 7th day of March, A. D. 1842.

ELI HARRIS, *Notary Public.*

UNITED STATES OF AMERICA, *State of Louisiana:*

By A. B. Roman, governor of the State of Louisiana.

These are to certify, that Eli Harris, whose name is subscribed to the instrument of writing herein annexed, is now, and was at the time of signing the same, a notary public, in and for the parish of Carroll, and that his signature is genuine; and that all his official acts, as such, are entitled to full faith and credit.

Given at New Orleans, under my hand and the seal of the State, this nineteenth day of March, one thousand eight hundred and
[L. S.] forty-two, and of the independence of the United States the sixty-sixth.

A. B. ROMAN.

By the governor:

LEVI DENIE,
Secretary of State.

THE STATE OF MISSISSIPPI, *Carroll county:*

I, Sam'l Hart, clerk of the probate court of said county, do hereby certify, that the within instrument of writing was filed in my office for record on the 26th day of March, inst., and that the same is duly recorded in the records of *and of* said office, in book (E,) pages 99 and 100.

Given under my hand and seal of office, at Carrolton, the 20th day March, 1842.

SAM'L HART, *Clerk*.

THE STATE OF MISSISSIPPI, *Bolivar county, set:*

I, Andrew B. Dodd, clerk of the probate court in and for said county, do certify, that the within instrument of writing was on this day filed in my office for record, whereupon I have made the same of record in book (B,) of the record of deeds in my office, pages 351, 352, and 353.

Given under my hand and private seal, there being no seal of office, this 26th day of September, A. D. 1842.

A. B. DODD, *Clerk*. [SEAL.]

THE STATE OF MISSISSIPPI, *Sun Flower county:*

I, John C. Hicks, clerk of the probate court of said county, do hereby certify, that the above mortgage was filed in my office for record on the 9th day of July, 1844, and that the same, together with all the certificates thereto, are duly recorded in record book (A,) on pages 7, 8, and 9.

Given under my hand and seal of office, this 16th day of April, A. D. 1845.

JNO. C. HICKS, *Clerk*.

Exhibit (*C.*)

Be it known and remembered, that before me, Eli Harris, notary public, duly commissioned and sworn, residing at Providence, in the parish of Carroll, and State of Louisiana, on this thirteenth day of July, in the year of our Lord one thousand eight hundred and forty, personally came and appeared James J. Chewning, an inhabitant of the city of Vicksburg, in Mississippi, who declared that he was justly and truly indebted unto James McG. Cuddy, an inhabitant of the city of New Orleans, in this State, in the sum of twelve hundred dollars, for which he has given to the said James McG. Cuddy his two notes of hand, for six hundred dollars each, both dated on this thirteenth day of July, eighteen hundred and forty; the first payable on the first day of January next, (1841,) and the second payable on the first day of January, 1842, eighteen hundred and forty-two; and which notes have been marked "ne varietur" by me, notary, to identify them with this act.

And to secure the payment of the said two notes, as they respectively fall due, the said James J. Chewning hereby mortgages and hypothecates unto the said James McG. Cuddy the following named negro slaves, to wit: John and Tempe his wife, Rhodes and his wife Viney, Zack and wife Charlotte, Lewis and wife Lucy.

The said parties waive the certificate required by article 3328 of the civil code of this State. Thus done in my office, the day and year

first above written, in presence of Felix Bosworth and John D. Harding, witnesses residing in the parish of Carroll, who have signed this act with the parties and me, the said notary.

JAS. J. CHEWNING,
JAS. McG. CUDDY.

Attest:

F. BOSWORTH,
JOHN D. HARDING.

ELI HARRIS, *Notary Public.*

I certify the foregoing mortgage to be recorded in my office, in notarial book (B,) folio 320.

Given under my hand and seal of office, this 13th day of July, A. D. 1840.

ELI HARRIS, *Notary Public.*

THE STATE OF LOUISIANA, *parish of Carroll:*

I, Felix Bosworth, parish judge in and for the parish of Carroll, in the State of Louisiana, do certify the foregoing to be a true copy of the original mortgage on file and of record in my office.

Given under my hand and seal of office, this 20th day of January, A. D. 1842.

FELIX BOSWORTH, *Parish Judge.*

UNITED STATES OF AMERICA, *State of Louisiana:*

By A. B. Roman, governor of the State of Louisiana.

These are to certify, that Felix Bosworth, whose name is subscribed to the instrument of writing herein annexed, is now, and was at the time of signing the same, parish judge, in and for the parish of Carroll, State of Louisiana, and that his said attestation is in due form, and made by the proper officer; the said Felix Bosworth being by law keeper of the original deed of mortgage, and of the record thereof, from which said copy of said deed of mortgage, to which said attestation is affixed, was taken.

Given at New Orleans, under my hand and the seal of the State, this thirtieth day of May, one thousand eight hundred and
[L. S.] forty-two, and of the independence of the United States the sixty-sixth.

A. B. ROMAN.

By the governor:

LEVI DENIE,
Secretary of State.

THE STATE OF MISSISSIPPI, *Carroll county:*

I, Samuel Hart, clerk of the probate court, in and for the county of Carroll, do hereby certify, that the foregoing mortgage was filed in my office for record on the 26th day of March, inst., and that the same is duly recorded in the records of deeds of said office, in book (E,) page 102.

Given under my hand and seal of office, at Carrollton, the 28th day of March, A. D. 1842.

SAM'L HART, *Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar county:*

I, Andrew B. Dodd, clerk of the probate court in and for said county, do certify, that the foregoing instrument of writing was on this day filed in my office for record. Whereupon I have made the same of record in book (B,) of the records of deeds, pages 358 and 359.

Given under my hand and private seal, there being no seal of office, this 26th day of September, A. D. 1842.

A. B. DODD, [SEAL.]
Clerk.

THE STATE OF MISSISSIPPI, *Sun Flower county:*

I, John C. Hicks, clerk of the probate court of said county, do hereby certify, that the above deed was filed in my office for record on the 9th day of July 1844, and that the same, together with all the certificates thereto, are duly recorded in book (A,) on pages 5 and 6.

Given under my hand and seal of office, this 16th day of April, A. D. 1845.

[L. S.]

JNO. C. HICKS, *Cl'k.*

Exhibit (D.)

Be it known and remembered, that before me, Eli Harris, notary public, duly commissioned and sworn, residing at Providence, in the parish of Carroll, and State of Louisiana, on this thirteenth day of July, in the year of our Lord one thousand eight hundred and forty, personally came and appeared James J. Chewning, an inhabitant of the city of Vicksburg, in the State of Mississippi, who declared that he was justly and truly indebted unto Ferdinand Sims, of the same residence, in the sum of forty-eight hundred and seventy-one $\frac{50}{100}$ dollars, for which he has executed his note of hand in favor of the order of said Sims, with interest at ten per cent. per annum after maturity, and marked "ne varietur" to identify said note with this act, and which note is payable December 9th, 1840. And, to secure the payment of said note when it becomes due, agreeably to its tenor, and the true intent and meaning of this act, the said James J. Chewning does hereby mortgage and hypothecate, unto the said Ferdinand Sims, all the following described land and slaves, viz: The south half of lot number sixty-seven, lot No. sixty-eight, lot No. sixty-nine, and lot No. seventy, in township No. twenty-two, range No. thirteen east; and the north half of lot No. one, in township No. twenty-one, of range thirteen east; also a back concession of one-eighth of one section, lying immediately west of the aforesaid described land, containing in all eight hundred and fifteen acres, lying in said parish of Carroll, and State of Louisiana, on the Mississippi river; also the following named slaves, to wit, Louis, about thirty-eight years old; John, 50; Jack, 28; Tom, 18; Rhodes, 27; Jim, 40; Spencer, 17; Anderson, 18; Alexander, 20; Burrill, 32; Jesse, 40; George, 21; Romen, 30; Tempe, 25; Matilda, 18; Elizabeth, 18; Nancy, 17; Tempe, 40; Lucy, 40; Charlotte, 20; Celia, 45; Milly, 30; Agness, 45; China, 22; Louisa, 12; Mary, 12; Manah, 20; Nancy, 34; Jack, 2; Elsey, 13;

Margaret, 7; Sindy, 5; Caroline, 3; Harriet, 12; Kitty, 3; Kitty, 16 months, and Catharine four months old.

The said James J. Chewning hereby waives all appraisement that may be required by the existing laws of this State, should the sheriff seize the above described property by virtue of an executory process. By the certificate of the parish judge of this parish there does not exist of record in his office any mortgage on any of the above described property, except a mortgage this day executed by the said James J. Chewning, in favor of James McG. Cuddy, to secure the payment of twelve hundred dollars, on the following named slaves, viz: John and Tempe his wife, Rhodes and his wife Viney, Zack and wife Charlotte, Louis and wife Lucy; except a mortgage on the half thereof to the Railroad Bank in Vicksburg.

Thus done in my office, the day and year first above written, in presence of Benjamin F. Bosworth and Felix Bosworth, citizens residing in the said parish of Carroll, who have signed this act with the parties and me, the said notary.

JAS. J. CHEWNING,
FERDINAND SIMS,
By his attorney in fact, A. M. PAXTON,

B. F. BOSWORTH,
F. BOSWORTH.

ELI HARRIS,
Notary Public.

I certify the foregoing mortgage to be recorded in my office, in notarial book (B,) folio 321. Given under my hand and seal of office, this 13th day of July, A. D. 1840.

ELI HARRIS, *Notary Pub.*

THE STATE OF LOUISIANA, *Parish of Carroll:*

I, Felix Bosworth, parish judge in and for the parish of Carroll, do certify the foregoing to be a true copy of the original mortgage on file and of record in my office.

Given under my hand and seal of office, this 20th day of January, A. D. 1842.

FELIX BOSWORTH, *Parish Judge.*

UNITED STATES OF AMERICA, *State of Louisiana:*

By A. B. Roman, governor of the State of Louisiana.

These are to certify, that Felix Bosworth, whose name is subscribed to the instrument of writing herein annexed, is now, and was at the time of signing the same, parish judge, in and for the parish of Carroll, State of Louisiana, that his signature is genuine, and that his said attestation is in due form, and made by the proper officer; the said Felix Bosworth being by law keeper of the original deed of mortgage, and of the record thereof, from which said copy of said deed of mortgage, to which said attestation is affixed, was taken.

Given at New Orleans, under my hand and the seal of the State, this thirtieth day of May, one thousand eight hundred and forty-two.

By the governor: A. B. ROMAN,
LEVI DENIE,
Secretary of State.

THE STATE OF MISSISSIPPI, *Carroll county:*

I, Saml. Hart, clerk of the probate court of said county, do hereby certify, that the within mortgage was filed in my office for record on the 26th day of March, inst., and that the same is duly recorded in the records of and in my office, in book E, pages 102, 103, 104.

Given under my hand and seal of office, at Carrollton, the 28th day of March, A. D. 1842.

SAML. HART, *Clk*.

THE STATE OF MISSISSIPPI, *Bolivar county:*

I, Andrew B. Dodd, clerk of the probate court in and for said county, do certify, that the within mortgage and annexed certificates were on this day filed in my office for record. Whereupon I have made the same of record in book (B,) of the records of deeds in my office, pages 354 and 355.

Given under my hand and private seal, there being no seal of office, this 26th day of September, A. D. 1842.

A. B. DODD. [SEAL.]

THE STATE OF MISSISSIPPI, *Sun Flower county:*

I, John C. Hicks, clerk of the probate court of said county, do hereby certify, that the above deed was filed in my office for record on the 9th day of July, 1844, and that the same, together with all the certificates thereto, are duly recorded in book A, on pages 3 and 4.

Given under my hand and seal of office, this 16th day of April, A. D. 1845.

[L. S.] JNO. C. HICKS, *Cl'k*.

Exhibit E.

Be it known and remembered, that before me, Eli Harris, notary public, duly commissioned and sworn, residing at Providence, in the parish of Carroll, and State of Louisiana, on this eighth day of September, in the year of our Lord one thousand eight hundred and forty-one, personally came and appeared James J. Chewning, an inhabitant of the county of Warren, in the State of Mississippi, who declared that he was justly and truly indebted unto Alfred C. Downs, of said county, in the sum of six thousand dollars; for this, that whereas the said Alfred C. Downs has become the surety of this appearer on two notes, for three thousand dollars each, payable on the first day of January, eighteen hundred and forty-one, to Alfred C. Downs; also for this, that the said James J. Chewning acknowledges himself indebted unto the said Alfred C. Downs in the sum of fifty thousand dollars, for this, that whereas the said Alfred C. Downs has become the security of this appearer on

a bond de bonis non of Thomas C. Downs' estate, in the county of Warren, in the State of Mississippi, for said amount of fifty thousand dollars.

Now, therefore, for the purpose of securing the said Alfred C. Downs against any loss, cost, damages, or interest, for his securityship as above stated, and to hold the said Alfred C. Downs harmless for his liabilities for his securityship aforesaid, the said James J. Chewning does hereby mortgage and hypothecate, unto the said Alfred C. Downs, the following described negroes, to wit: Lewis about 38 years old, John 50, Jack 28, Tom 18, Rhodes 27, Jim 40, Spencer 17, Anderson 18, Burrill 32, Alick 20, George 21, Bowen 30, Tempey 25, Matilda 18, Elizabeth 18, Nancy 17, Tempey 40, Lucy 40, Charlotte 20, Celia 45, Mattey 30, Chaney 22, Agnis 40, Giles 16, Zack 40, Charlotte 25, Vina 25, Elsey 15, Louisa 12, Mary 12, Matilda 20, Nancy 30, Margaret 10, Jake 6, and ten or twelve children, together with the increase of said female slaves; and the said James J. Chewning does hereby promise, that he will not sell, mortgage, donate, or deteriorate, the said mortgaged property to the prejudice of the said mortgagee.

The mortgagee waives the certificate required by article 3328 of the civil code of this State. Thus done in my office, the day and year first above written, in presence of James G. Fitzgerald and Alfred Landsberry, witnesses, residing in said parish of Carroll, who have signed this act with the parties and me, notary.

JAS. J. CHEWNING.

Accepted. G. W. GANT,
Attorney in fact.

Witnesses: JAS. G. FITZGERALD,
ALFRED LANDSBERRY.

ELI HARRIS, *Notary Public.*

I certify the foregoing mortgage to be recorded in my office, in notarial book C, folio 18.

Given under my hand and seal of office this eighth day of September, A. D. 1841.

ELI HARRIS, *Notary Public.*

VICKSBURG, 31*st August*, 1841.

FELIX BOSWORTH, esq., or ELI HARRIS, or G. W. GANT:

GENT: Either one of you are authorized and requested to accept of a mortgage made by James J. Chewning to myself, to secure certain debts therein specified; the mortgage bears on property in the parish of Carroll, State of Louisiana, dated 8th September, 1841.

Very respectfully, your obedient servant,

A. C. DOWNS.

THE STATE OF LOUISIANA, *parish of Carroll:*

I, Felix Bosworth, parish judge in and for the parish of Carroll, do certify the foregoing to be a true copy of the original mortgage on file and of record in my office.

Given under my hand and seal of office, this 20th day of January, A. D. 1842.

FELIX BOSWORTH,
Parish Judge.

UNITED STATES OF AMERICA, *State of Louisiana:*

By A. B. Roman, governor of the State of Louisiana.

These are to certify, that Felix Bosworth, whose name is subscribed to the instrument of writing herein annexed, is now, and was at the time of signing the same, parish judge in and for the parish of Carroll, State of Louisiana, and that his signature is genuine; and that his said attestation is in due form and made by the proper officer; the said Felix Bosworth being by law keeper of the original deed of mortgage, and of the record thereof, from which said copy of said deed of mortgage, to which said attestation is affixed, was taken.

Given at New Orleans, under my hand and the seal of the State, this thirtieth day of May, one thousand eight hundred and
[L. S.] forty-two, and of the independence of the United States the sixty-sixth.

A. B. ROMAN.

By the governor:

LEVI DENIE,
Secretary of State.

THE STATE OF MISSISSIPPI, *Carroll county:*

I, Samuel Hart, clerk of the probate court of said county, do hereby certify, that the foregoing mortgage was filed in my office for record on the 20th day of March, instant, and that the same is duly recorded in the records of deeds *deeds* of said office, in book E, page 100.

[L. S.] Given under my hand and seal of office, at Carrollton, the 28th day of March, A. D. 1842.

SAML. HART, *Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar county:*

I, Andrew B. Dodd, clerk of the probate court in and for said county, do certify, that the within instrument of writing, with the certificates, were on this day filed for record in my office; whereupon, I have made the same of record, in book (B) of the records of deeds, pages 356, 357.

Given under my hand and private seal, there being no seal of office, this 26th day of September, A. D. 1842.

A. B. DODD, *Clerk.* [SEAL.]

THE STATE OF MISSISSIPPI, *Sun Flower county:*

I, John C. Hicks, clerk of the probate court of said county, do hereby certify, that *that* the above mortgage was filed in my office for record on the 9th day of July, A. D. 1844, and that the same, together with all the certificates thereto, are duly recorded in record book (A,) on pages 1 and 2.

Given under my hand and seal of office, this 16th day of April, A. D. 1845.

JNO. C. HICKS, *Clerk.*

And read the interrogatories numbered 1 and 2, propounded by counsel for the plaintiff, and the examination of said witness in chief, and the answers thereto, and the interrogatories and answers, from one to twenty-five inclusive, as propounded and answered upon the examination of said witness by the counsel for the defendant; also the interrogatories and answers, from one to twenty inclusive, as propounded and answered, upon the resumed examination, by the counsel for the plaintiff; and thereupon the plaintiff, by his counsel, offered to read the interrogatory and answer numbered twenty one, as made and set forth in the said resumed examination, to which interrogatory and answer the defendant, by his counsel, objected as incompetent, which objection was sustained by the court, and said interrogatory and answer excluded from the jury; and thereupon the plaintiff, by his counsel, read the residue of said deposition, as contained in the last interrogatory propounded by the plaintiff, and the last interrogatory by the defendant, and the answers thereto; and thereupon the plaintiff, by his counsel, refused to read to the jury the exhibits A, B, C, D, and E, made and referred to in said deposition, as herein before contained; and, upon such refusal, the defendant moved the court to exclude from the jury the whole of said deposition, as read by the plaintiff, which motion was overruled by the court; and thereupon the defendant, by his counsel, excepted to the opinion and order of the court overruling said motion, and then tendered this his bill of exceptions; and thereupon the said exhibits A, B, C, D, and E were read to the jury by defendant's counsel, as evidence on behalf of said defendant; and thereupon the defendant, by his counsel, offered and read to the jury, as evidence on his behalf, a transcript of a deed of mortgage from James J. Chewning to the president, directors, and company of the Commercial and Railroad Bank of Vicksburg, with the certificates thereto endorsed; which deed of mortgage and certificates thereon are in the words and figures following, to wit:

Transcript of deed of mortgage.

James J. Chewning to C. and R. R. Bank.—Mortgage.

THE STATE OF MISSISSIPPI, *Warren county*.

This indenture, made and entered into this first day of December, one thousand eight hundred and thirty-nine, between James J. Chewning, of the State and county aforesaid, of the first part, and the president, directors, and company of the Commercial and Railroad Bank of Vicksburg, of the second part, a *a* corporation, duly and legally incorporated by the Legislature of Mississippi, under that name and style, witnesseth: That, for and in consideration of the sum of ten dollars, in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, and for divers other good causes and considerations hereinafter set forth, the said James J. Chewning hath bargained, sold, and conveyed, and by these presents doth bargain, sell, convey, and deliver, to the said parties of the second part, one undivided moiety of a tract or parcel of land, situate, lying, and being within the State of Lou-

isiana, and parish of Carroll, known and designated as the south half of lot number fifty-seven, all of lot number sixty-eight, all of lots number sixty-nine and seventy, in township twenty-two, in range thirteen east. The north half of lot number one, in township number twenty-one, of range thirteen east; also a back concession of one-eighth of one section, lying immediately west of and back of the said land just before described, containing in all, by estimation, eight hundred and fifteen acres; also an undivided half of the following slaves now on the land above named in Louisiana, to wit, Lewis, aged about thirty years; John, fifty years; Jack, twenty-eight years; Tom, eighteen years; Peter, aged about twenty years; Rhodes, aged twenty-seven years; Isaac, aged eighteen years; George, aged nineteen years; Jim, aged about forty years; Spencer, aged about seventeen years; Anderson, aged eighteen years; Giles, aged fourteen years; Burrill, aged thirty years; Jesse, aged forty years; Coleman, aged thirty years; Tempe, aged twenty-five years; Matilda, aged eighteen years; Elizabeth, aged eighteen years; Nancy, aged seventeen years; Tempe, about forty years old; Charlotte, twenty years; Celia, about forty-five years; Mittey, about thirty years; Agnes, about forty-five years; China, about twenty-two years; Laura, twelve years old; Nancy, thirty-four years old; Margaret, about seven years; Siney, about five years old; Caroline, about three years; Harriet, two years old; Hest, or Hester, about three years old; Kitty, about sixteen months old; and boy Claibourn, about four months old. And also the following tracts or parcels of land, situate, lying, and being in the State of Mississippi, to wit, one undivided moiety of a tract of land lying and being in the county of Carroll, owned jointly with one John S. Gooch, known according to the plats of said land in the United States land office as section number sixteen, the south of the northwest quarter of section number nine, the east half of the northwest quarter, and the east half of the southwest quarter, of section number twenty, and the west half of the southwest quarter of section ten, all of which lies in township number eighteen, of range two east, and containing, by estimate, thirteen hundred and sixty acres; also two lots of land lying and being in the city of Vicksburg, State of Mississippi, and county of Warren, known as lots number sixty-five and sixty-six, in square number eighteen, according to the plat known as Vick's enlargement of the town of Vicksburg; also two other lots of land numbered fifty-five and fifty-six, in square numbered as designated on said plat of Vick's enlargement. Also the undivided moiety of a lot of land, designated as lot numbered one hundred and fifty-one, in square twenty-three, fronting on Second East street seventy-three feet nine inches, and running back one hundred and forty-seven feet six inches. Also one undivided moiety of another lot of land, situate in said city of Vicksburg, and designated on the plat thereof as lot number thirteen, in square number nineteen, beginning at a point thirty-two feet from the southwest corner of said lot, running east on First East street thirty-two feet, and extending back at right angles one hundred feet. Also an undivided moiety of a lot of land lying in the city of Vicksburg, known as fractional lot

one hundred and fifty-four, in square number twenty-three, lying on the north side of Open Woods street, bounded on the west by lot numbered one hundred and fifty-three, and on the north by lot numbered one hundred and fifty-one. Also that certain lot lying in the city of Vicksburg, known as the north half of lot numbered two hundred and eighty-nine, in square number sixty, containing, by estimate, a quarter of an acre. Also the following negro slaves, now in Bolivar county, and State of Mississippi, on the plantation purchased by the said James J. Chewning at sheriff's sale of W. H. Sims, to wit, Jasper, aged about twenty-eight years; his wife Harriet, aged about twenty-seven years; boy Jim, about ten years; Lord, about twenty years old; Agnes, about eighteen years old; Thomas, about twenty years old; Maletty, about nineteen years old; Edmund, about thirty years old; Kitty, about twenty-seven years old; Caroline, about five years old; Jim, about eighteen years old; Lucy, about twenty years old; Billy, about thirty-five years old; Letitia, about twenty-five years old; Sylvia, about twenty-five years old; Lucy Ann, about twenty-two years old; Madison, eighteen years old; Fleming, eighteen years old; Morton, fifteen years old; Sarah, eighteen years old; Susan, fourteen years old; Fanny, twenty years old; Sally, twenty years old; Morgan, twenty-eight years old; Nancy, twenty-eight years old; Amie, twenty years old; Alfred, fifteen years old; Napoleon, fifteen years old; Samson, fifteen years old; Lewis, ten years old; and Sam, about twenty-five years old. Also the following lots or parcels of land, situate, lying, and being in the county of Bolivar, and State of Mississippi, conveyed by Francis Patterson, sheriff of said county, by deed bearing date twenty-first day of October, eighteen hundred and thirty-nine, to wit, section number twenty-eight; also lots number ten, eleven, twelve, and thirteen, in section number twenty-three; also lots number three, four and five, in section number twenty six; also southwest quarter of section number twenty-two; also southeast quarter of section number twenty-two, east half of southwest quarter, section number twenty-one, all lying and being in township number eighteen, range number one west, in the said county of Bolivar, containing in all fifteen hundred and seventy acres, and a fraction of an acre. Also three acres of land in the county of Warren, and State of Mississippi, near the Vicksburg and Jackson Railroad, described as follows, beginning at a post in sectional line dividing sections nineteen and twenty-one, three degrees twenty-eight chains east of the northeast corner of section thirty-four, (34,) on the north side of the railroad; thence north ten degrees twenty three chains, to a post on the north side of bayou, and on the north side of a boundary of a road laid off by S. Howard; thence up said bayou, three degrees one chain, to a post in said bayou, and in the line of said road; thence south nine degrees seventy-five chains, to a post on the north side of the railroad; thence with said railroad, south eighty and one-half chains west, three degrees four chains, to the beginning, as will more fully appear by deed from Wm. M. Gwin, marshal, to James J. Chewning, recorded in Warren county. Also the undivided moiety of lots number twenty-seven and twenty-eight, in square number two

in *in* the lower division of that plat of lots heretofore laid off by the Vicksburg Cotton Press Company, on the corner of Henry and Levee streets, as will appear by reference to a deed from J. P. Harrison, trustee, to Bibby and Chewning. Also a full fee simple interest in and to lot number one hundred and twenty, in square number twenty, as laid down in the original plat of the city of Vicksburg, sold by sheriff Morris as the property of Watson Flowers, to the said James J. Chewning. Also lots seven and eight, in square three, in Springfield, fronting on Farmer's, Randolph, and Poplar streets, as will more fully appear by reference to plat of lots laid off by John G. Parham, north of and adjacent to the city of Vicksburg. Also one house and lot in the town of Clinton, Hinds county, Mississippi, being the only lot owned by the said James J. Chewning in Clinton, which said lot was conveyed by Moses Hall to Smith, and by Smith to James J. Chewning. Also all my right, title, and interest in and to the town of Pine Bluff, in Arkansas, being one undivided fourth thereof, owned in conjunction with William M. Pinckard, Henry S. Dawson, and A. H. Davis, as will more fully appear by reference to a deed from A. H. Davis to James J. Chewning, W. M. Pinckard, and H. S. Dawson. Also the following described lands owned solely by James J. Chewning, lying and being in the county of Crawford, and State of Arkansas, described more particularly as follows, being northeast fractional part of the northeast fractional quarter of section eleven, township nine north, range twenty-nine west, containing forty acres $\frac{9}{100}$ acre.

Also the east half of the northeast quarter of section twelve, and the east half of the southeast quarter of section one, township ten north, range twenty-nine, containing one hundred and sixty acres, conveyed to said Chewning by Curry Barnett and wife. Also northwest quarter of southwest quarter of section seventeen, township ten north, range twenty-three west, containing forty acres, conveyed to said Chewning by Chas. Whitson and wife. Also eighty acres conveyed to said Chewning by deed from John Whitson. Also the west half of the southeast quarter of section six, township ten north, range twenty-three west, conveyed by the said Wm. Whitson to the said J. J. Chewning, containing eighty acres. Also the northwest quarter of northeast quarter of section seven, township ten north, range twenty-eight west, containing forty acres, conveyed by John W. Whitson to James J. Chewning. Also three hundred and twenty acres, in said county, conveyed to the said James J. Chewning by W. P. Moore and wife, reference to which will describe more particularly said land. Also the northwest quarter of the northeast quarter of section number seven, in township number ten north, of range number twenty-eight west, containing forty acres. Also the west half of the northeast quarter of section number six, in township number ten north, of range number twenty-eight west, containing seventy-eight acres $\frac{78}{100}$. Also the west half of the southeast quarter of section number six, in township ten north, of range twenty-eight west, containing eighty acres. Also the following described body of lands, situate, lying, and being in the State of Mississippi, and

county of Washington, known and described more particularly as follows, to wit, the whole of section twenty-seven, of township seventeen, of range five west, containing six hundred and forty-four acres, and one hundredths of an acre. Also all that part of section twenty-eight, of township seventeen, of range four west, which is situated and lies on the eastern side of the bayou or lake, running north through said township, which lake or bayou is known or designated as Dawson's lake. Also all of the southern half of that portion of section twenty-one, of township , of range four west, which is situated on the eastern side of the bayou or lake hereinbefore described. Also all of that portion of section thirty-three, of township seventeen, of range four west, which is situated and lays on the eastern side of the bayou hereinbefore described; all of which said lands at Mount Salus, Mississippi land office, in the name of James Saul, containing in all about fifteen hundred and seventy acres. Also the following described lands, situate, lying, and being in the county of Yazoo, and State of Mississippi, being the north half and east half southeast quarter, and west half southwest quarter of section number twenty-nine, township number ten, of range number four west, containing four hundred and seventy-eight $\frac{4}{100}$ acres. Also lot number four, of section number thirty-three, of township number four west, containing seven acres $\frac{7}{100}$. Also lot number five, of section number twenty-eight, township number ten, of range number four west, containing one hundred and ten eighty-seven hundredths acres, a description of which lands will be seen by reference to certificates numbered 22,371, 22,372, 22,373. Also the following lot of land, to wit, one undivided half thereof, known and described in the original plat of the city of Vicksburg, as lot two hundred and thirty-seven, on square number thirty-eight, containing one acre. Also the following described lot or parcel of land, being one undivided moiety thereof, lying near the depot of the Vicksburg and Jackson Railroad, in Pinkardia, known and described more particularly as lots number sixty-one and sixty-two, in square number nine, fronting on Madison and Mulberry streets. Also the following five negro slaves, in the city of Vicksburg: Tom, aged twenty-five; Harriet, aged twenty-four; Hetty, aged ; and Mary and Madison. And the said James J. Chewning hereby conveys to the said parties of the second part all the stock and farming utensils on the plantations hereinbefore described, in the parish of Carroll, Louisiana; and on the plantation in the county of Bolivar, and State of Mississippi. To have and to hold to the said parties, and their successors in office, and assigns forever. And the said James J. Chewning hereby covenants and agrees, to and with the said parties of the second part, that he will, and his heirs shall, forever warrant and defend the title to the above lots of land, in fee simple, against the claims of all persons whatsoever, and that the said slaves herein named are slaves for life, and as such will warrant and defend the title to them against the claims of all persons whomsoever.

Now, the condition of the above conveyance is such, that whereas the said James J. Chewning is justly indebted to the parties of the second

part, in the sum of one hundred and thirty thousand dollars, evidenced by his promissory note for one hundred and thirty thousand dollars, bearing date on the thirty-first day of December, one thousand eight hundred and thirty-nine, and due and payable twelve months after the date thereof, at the Commercial and Railroad Bank of Vicksburg, to the parties of the second part; Now, should the said James J. Chewning well and truly pay to the said parties of the second part, on the thirty-first day of December, eighteen hundred and forty, the sum of one hundred and thirty thousand dollars, then this conveyance to be null and void, otherwise to remain in full force and effect. It is further covenanted and agreed by the parties hereto, that should the said James J. Chewning well and truly pay on the 31st of December, eighteen hundred and forty, to the said parties of the second part, the sum of five thousand dollars on the said note above specified; and shall on the 31st December, eighteen hundred and forty-one, pay the sum of thirteen thousand eight hundred and eighty-eight dollars $\frac{8\,8}{1\,0\,0}$, on said notes, with all interest due upon said last named sum; and shall on the 31st December, A. D. 1842, pay the further sum of thirteen thousand eight hundred and eighty-eight dollars $\frac{8\,8}{1\,0\,0}$, and all legal interest due on said last named sum, and so on, continuing to pay on the 31st day of December of each and every year thereafter, the sum of thirteen thousand eight hundred and eighty-eight dollars $\frac{8\,8}{1\,0\,0}$, until the entire sum of one hundred and thirty thousand dollars shall have been fully paid and discharged, he, the said Chewning, paying said instalments annually and punctually, with all the interest on said instalments which may have accrued as they respectively fall due, there being, in all, one instalment of five thousand dollars, and nine annual instalments of thirteen thousand eight hundred and eighty-eight dollars $\frac{8\,8}{1\,0\,0}$, falling due respectively on the 31st December of each and every year, then the said parties of the second part agree to be herewith content, and not to proceed at law in foreclosure of this mortgage, unless default be made by him in some of the payments aforesaid. It is further expressly agreed between the parties, that should there be default in any one of the payments above specified, at the respective maturities, then shall the whole amount be due. It is further agreed by the parties hereto, that said James J. Chewning may retain the possession of said land and slaves, and receive and appropriate to his own use the rents and profits arising therefrom, until default be made in some one of the payments aforesaid. And it is further agreed and understood, between the parties of the first and second part, that the said James J. Chewning shall not remove any of the negroes from the State of Mississippi, without first procuring the consent of the parties of the second , until this mortgage has been fully discharged and satisfied.

In testimony whereof the said party of the first part, and William H. Benton, as president of said corporation, and representative of the said parties of the second part, have hereunto set their hands and seals in Vicksburg, and State of Mississippi.

JAS. J. CHEWNING. [L. S.]
W. H. BENTON, [L. S.]
President.

STATE OF MISSISSIPPI, *Warren county, ss:*

Before me, Harvey M. Jenkins, clerk of the probate court of said county, this day came James J. Chewning and William H. Benton, whose names are hereunto affixed, and acknowledged that they had signed, sealed, and delivered the foregoing deed on the day and year therein named, and for the purposes therein stated.

Given under my hand and seal of office this 31st December, A. D. 1839.

[L. S.] H. M. JENKINS, *Clerk*.

STATE OF MISSISSIPPI *Washington county, ss:*

I, Thomas W. Endicott, clerk of the probate court in and for the county and State aforesaid, do certify, that the foregoing instrument was this day filed and recorded in my office in book (I,) pages 353, 354, 355, 356, 357, 358, 359, and 360.

Given under my hand and seal of office this 3d day of January, A. D. 1840.

[L. S.] THOS. W. ENDICOTT, *Clerk*.
By W. ENDICOTT, *D. C.*

THE STATE OF MISSISSIPPI, *Bolivar county, sct:*

I, Andrew B. Dodd, clerk of the probate court of said county, do certify, that the foregoing mortgage was, on the 24th, filed and recorded, the twenty-fourth day of January, A. D. 1840.

Test: A B. DODD, *Clerk*.

THE STATE OF MISSISSIPPI, *Bolivar county, sct:*

I, Andrew B. Dodd, clerk of the probate court of said county, do certify the foregoing to be a true copy from the records in my office, and that the same is found of record in book deeds (B,) pages 453 to 460.

Given under my hand and private seal, there being no seal of office, this 26th day of June, A. D. 1843. A. B. DODD, *Clerk*.

And thereupon the defendant, by his counsel, read in evidence to the jury the note of said Chewning to the said president, directors, and company of the Commercial and Railroad Bank of Vicksburg, in the words and figures following, to wit:

$130,000. VICKSBURG, MISS., *December* 31*st*, 1839.

Twelve months after date I promise to pay to the president, directors, and company of the Commercial and Railroad Bank of Vicksburg, or order, the sum of one hundred and thirty thousand dollars, value received, payable at the office of said Bank of Vicksburg.

(Signed) JAS. J. CHEWNING.

Endorsed, April 16, 1840, by errors in calculation of discount, three hundred and twenty-eight $\frac{8}{10}\frac{1}{0}$ dollars, ($328 $\frac{8}{10}\frac{1}{0}$.) J. G. B., *Cr*.

The signature to the said note was admitted, by the counsel of the said plaintiff, to be in the handwriting of the said Chewning; and there-

upon the plaintiff, by his counsel, offered and read in evidence to the jury the following records, to wit, of *of* the circuit court of the United States, for the southern district of Mississippi, in the case of Talbott, Jones & Co. vs. Hector McNeill, and William and Henry Massingill vs. Hector McNeill, and Robert M. Patton vs. Atherton & Harvey, which records are in the words and figures following, to wit:

Record.

TALBOT JONES & Co. }
vs.
HECTOR MCNEILL. }

Pleas before the honorable John McKinley and Samuel J. Gholson, judges of the circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, at the May term, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore, to wit, on the twenty-third day of January, A. D. 1839, the following writ of summons ad respondendum issued out of the clerk's office of the court aforesaid, in these words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, without delay, to summon Hector McNeill, a citizen of the State of Mississippi, that he be and appear before the circuit court of the United States, to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to Samuel Jones, jr., and John Jones, citizens of the State of Maryland, partners, trading under the firm of Talbot, Jones & Co., of a plea of trespass on the case to their damage five thousand dollars, and that he do file his plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against him by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 23d day of January, A. D. 1839.
[L. S.]

WM. BURNS, *Clerk*.

Marshal's return.

Executed March 2, 1839.

WM. M. GWIN, *Marshal*.
By E. H. GREER, *Deputy*.

And on the said 23d day of January, A. D. 1839, the said plaintiffs, by Combs & Coones, their attorneys, filed their declaration herein against the said defendant in the following words and figures, to wit:

United States circuit court, May term, A. D. 1839.

UNITED STATES OF AMERICA,

Southern district of the State of Mississippi:

Samuel Jones, jr., and John Jones, citizens and residents of the State of Maryland, merchants in trade, trading under the name and style of Talbot, Jones & Co., complain of Hector McNeill, a citizen and resident of the State of Mississippi, in custody, &c., of a plea of trespass on the case; for that whereas, heretofore, to wit, David M. Porter, by the name and signature of D. M. Porter, on the 9th day of June, 1837, at Madisonville, to wit, at the district aforesaid, made his certain promissory note in writing, bearing date the day and year aforesaid, and then and there promised to pay, seven months after the first day of June, 1837, without defalcation, to Hector McNeill or order, the sum of two thousand four hundred and forty-eight dollars, sixty-nine cents, for value received, negotiable and payable at the Planters' Bank, State of Mississippi, at Natchez, and then and there delivered said note to the said Hector McNeill, and the said Hector McNeill then and there duly endorsed and delivered said note to the plaintiffs, and, by that endorsement, ordered and appointed the said sum of money to be paid to the said plaintiffs; and the said plaintiffs say, that when said note became due and payable, to wit, on the 4th day of January, 1838, [it] was presented, at the bank aforesaid at Natchez, to the teller of said bank, and payment thereof demanded of the said sum of money in said promissory note specified; and that neither the said teller, nor the said Porter, nor any person else, did or would pay the same. By means whereof the said Hector McNeill then and there became liable to pay the said sum of money in said note specified, according to the tenor and effect thereof; and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, and at the district [aforesaid,] undertook, and then and there faithfully promised, to pay the said sum of money in said note specified when he should be thereunto afterwards requested. Nevertheless, the said defendant, not regarding his said promise and undertaking, has not as yet paid the said sum of money to the said plaintiffs, or any part thereof, (although often requested so to do,) but to pay the same, or any part thereof, to the said plaintiffs, the said defendant has hitherto wholly failed and refused, and still does fail and refuse, so to do, to the damage of the plaintiffs five thousand dollars; and therefore they sue, &c.

COMBS & COONES,
Attorneys for the plaintiffs.

Afterwards, to wit, at the said May term of the court aforesaid, to wit, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, came the plaintiffs aforesaid, by their attorneys aforesaid, and it appearing to the satisfaction of the court that the said writ herein has been duly executed, and the said defendant failing to appear, though solemnly called; therefore, it is considered by

the court that the said Tolbott, Jones & Co., plaintiffs, recover against the said Hector McNeill, defendant, the sum of five thousand seven hundred and one dollars and seventy-two cents, for their damages which they have sustained by reason of the premises, and also their costs and charges by them about their suit in this behalf expended. And that the said defendant, in mercy, &c.

And afterwards, to wit, on the 23d day of June, in the year of our Lord one thousand eight hundred and thirty-nine, the following execution of fieri facias issued *issued* against the said defendant by virtue of the foregoing judgment, in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Mississippi, set:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements, of Hector McNeill, late of your district, you cause to be made the sum of twenty-seven hundred and one $\frac{72}{100}$ dollars, which Samuel Jones, jr., and John Jones, under the firm of Talbott, Jones & Co., lately in our circuit court for the district aforesaid, have recovered against him for their damages which they have sustained by reason of the non-performance of a certain promise and assumption by the said H. McNeill to the said Talbot, Jones & Co. lately made, with interest on said sum, at 8 per centum per annum, from the 16th day of May, 1839, until paid; also the sum of forty-four dollars and fifty-eight and one-third [cents,] for costs by them about their suit in that behalf expended, whereof the said defendant is convicted, as appears to us of record; and that you have the said moneys before the judges of our said court, on the first Monday of November next, to render unto said plaintiffs for their damages and costs aforesaid; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of
[L. S.] May, A. D. one thousand eight hundred and thirty-nine, and in the 63d year of the independence of the United States of America.

Issued the 22d day of June, 1839.

WM. BURNS, *Clerk*.

Marshal's return, 18th October, 1839. Levied on Noble, Daniel, and Bazzle, negroes, and took a bond, with James Chewning and D. M. Porter, as security, which bond is this day forfeited, 4th November, 1839.

W. M. GWIN, *Marshal*.
By E. H. GREER, *his Deputy*.

Forthcoming bond.

Know all men by these presents, that we, Hector McNeill, D. M. Porter, and James J. Chewning, citizens of the State of Mississippi, are

held and firmly bound unto Samuel Jones, junior, and John Jones, under the firm of Talbot, Jones & Co., in the just and full sum of five thousand four hundred and ninety-two dollars and sixty cents, lawful money of the United States, to be paid to the said Talbot, Jones & Co., executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, our executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 18th day of October, eighteen hundred and thirty-nine.

The condition of this obligation is such, that whereas the said Talbot, Jones & Co., has sued out of the circuit court of the United States, for the southern district of Mississippi, a writ of fieri facias against the goods and chattels, lands and tenements, of the above bound Hector McNeill, for the sum of twenty-seven hundred and one dollars and 72 cents, with interest thereon, from the 16th day of May, eighteen hundred and thirty-nine, on said sum, at the rate of 8 per cent. per annum until paid, and the further sum of forty-four dollars and fifty-eight cents for the costs incurred thereon; which writ of fieri facias has been levied by the marshal of said district upon the following described property, viz: three negro men, Noble, Daniel, and Bazzle, the property of the said Hector McNeill, which said property was suffered to remain in the possession of the above bound Hector McNeill, upon his executing this bond, with the above bound Porter and Chewning, sureties therein; and the said defendant and sureties agree, that said property shall be delivered and sold in the city of Jackson, at the front door of the State-house.

Now, if the above bound Hector McNeill do and shall well and truly deliver the said property to William M. Gwin, marshal of the district aforesaid, at the front door of the State-house, in the city of Jackson, on the 4th day of November next ensuing, by twelve o'clock noon of that day, to be disposed of according to law, in discharge of the aforesaid writ of fieri facias, then and in that case this obligation to be null and void, otherwise to remain in full force and virtue.

H. McNEILL, [SEAL.]
JAMES J. CHEWNING, [SEAL.]
D. M. PORTER. [SEAL.]

And afterwards, to wit, on the 17th day of December, in the year of our Lord one thousand eight hundred and thirty-nine, the following writ of fieri facias was issued against the principal and securities in the forthcoming bond in this case, according to the statute in such case made and provided, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas at the May term, 1839, of the circuit court of the United States for said district, Samuel Jones, junior, and John Jones, (under

the firm of Talbot, Jones & Co.,) recovered judgment against Hector McNeill for the sum of twenty-seven hundred and one $\frac{75}{100}$ dollars, with interest thereon at the rate of 8 per centum per annum, from the 16th day of May, A. D. 1839, until paid, together with costs and charges by said plaintiffs in and about their said suit in that behalf expended, whereof the said defendant was convicted, as appears to us of record.

And whereas, on the 22d day of June, A. D. 1839, an execution of fieri facias issued from our said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs as aforesaid; which execution was levied upon certain property of said defendant, which said property was suffered to remain in possession of said defendant, upon executing a forthcoming bond according to law, with James J. Chewning and D. M. Porter, as security; which said bond was returned to our said court, at the November term thereof, A. D. 1839, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties, as against the defendant to said original execution, for said debt, interest, and costs.

Now, therefore, you are hereby commanded, that of the goods and chattels, lands and tenements, of the said H. McNeill, James J. Chewning, and D. M. Porter, late of your district, you cause to be made the amount of said judgment, interest, and costs, so recovered as aforesaid, also the sum of eighty-three $41\frac{2}{3}$ dollars, including the costs accrued since the emanation of said execution; and that you have the said sums of money before our said circuit court, at a term to be held on the first Monday of May next, to render to said plaintiffs; and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of
[L. S.] November, A. D. 1839, and in the 64th year of the independence of the United States.

Issued the 17th day of December, 1839.

WILLIAM BURNS, *Clerk*.

Endorsement.—No security of any kind is to be taken.

WILLIAM BURNS, *Clerk*.

Marshal's return.—Levied on the negroes Harriet and Tom, the property of J. J. Chewning, and not sold by consent of attorney.

WILLIAM M. GWIN, *Marshal*.
Per E. H. GREER, *Deputy*.

And afterwards, to wit, on the 25th day of May, in the year of our Lord one thousand eight hundred and forty, the following writ of venditioni exponas was issued in this case against the principal and sureties in the forthcoming bond, in the words and figures, to wit:

UNITED STATES OF AMERICA.
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you that you expose to sale these goods and chattels of Hector McNeill, principal, and James J. Chewning and D. M. Porter, sureties, consisting of the following negro slaves, to wit, Harriet and Tom, (levied on as the property of J. J. Chewning,) which, according to our command, you have taken, and which remain in your hands unsold, as you have certified to the judges of our circuit court, for the southern district of Mississippi, to satisfy Samuel Jones, junior, and John Jones, under the firm of Talbot, Jones & Co., the sum of twenty-seven hundred and nine $\frac{7}{100}$ dollars, with interest on the same at the rate of 8 per centum per annum, from the 16th day of May, 1839, until paid, and the sum of one hundred and twenty-five $\frac{53}{100}$ [dollars,] for costs and charges by them in that behalf expended, whereof the said Talbot, Jones & Co. have recovered execution against the said McNeill, Chewning, and Porter, by virtue of a certain judgment in our said circuit court. And that you have the said moneys before the judges of our circuit court, at a court to be held at Jackson, in and for the district aforesaid, on the first Monday of November next, to render to said plaintiffs; and have you then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of May, A. D. one thousand eight hundred and forty, and in the 64th year of the independence of the United States.

Issued the 25th day of May, A. D. 1840.

WILLIAM BURNS, *Clerk*.
Per SAM. LAUGHMAN, *D. C.*

Endorsement.—No security of any kind is to be taken.

WILLIAM BURNS, *Clerk*.

Marshal's return.—Offered the within land for sale, 9th November, 1840; not sold for want of bidders; sold the negroes Harriet and Tom, 26th October, 1840, to A. J. Paxton, for $975; made also on alias fi. fa. No. 1426, of the household furniture of Hector McNeill, which was surrendered by said McNeill, $242 50; applied to cost in No. 179, $75 43; No. 190, $115 56; No. 507, $92 12; and to cost in this case, $240 62; leaving to be applied in the cases Nos. 190, 507, and this, the sum of $693 77.

W. M. GWIN, *Marshal*.
By E. H. GREER, *Deputy*.

And afterwards, to wit, on the 8th day of October, in the year of our Lord one thousand eight hundred and forty, the following writ of alias fieri facias was issued against the principal and sureties on the forthcoming bond in this case, according to the statute in such case made and provided, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The president of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas, at the May term, 1839, of the circuit court of the United States, for said district, Samuel Jones, jr., and John Jones (under the firm of Talbot, Jones & Co.) recovered judgment against Hector McNeill, for the sum of twenty-seven hundred and one $\frac{7}{100}$ dollars, with interest thereon at the rate of 8 per centum per annum, from the 16th day of May, A. D. 1839, until paid, together with costs and charges by said plaintiffs, in and about their said suit in that behalf expended, whereof the said defendant was convicted, as appears to us of record. And whereas, on the 22d day of June, A. D. 1839, an execution of fieri facias issued from our said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs as aforesaid, which execution was levied on certain property of said defendant; which said property was suffered to remain in possession of said defendant, upon executing a forthcoming bond, according to law, with James J. Chewning and D. M. Porter as security, which said bond was returned to our said court at the November term thereof, A. D. 1839, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said suretics as against the defendant to said original execution, for said debt, interest, and costs. Now, therefore, you are hereby commanded as before, &c., that of the goods and chattels, lands and tenements, of the said Hector McNeill, James J. Chewning, and D. M. Porter, late of your district, you cause to be made the amount of said judgment, interest, and costs, so recovered as aforesaid, also the sum of one hundred and thirty-nine $\frac{65}{100}$ dollars, including the costs accrued since the emanation of said execution, and that you have the said sums of money before our circuit court, at a term to be held on the first Monday of November next, to render to said plaintiffs, and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of May, [L. S.] A. D. 1840, and in the 64th year of the independence of the United States.

Issued the 8th day of October, 1840.

WM. BURNS, *Clerk*,
Per G. W. MILLER, *D. C.*

Endorsement.

No security of any kind is to be taken.

WM. BURNS, *Clerk*,
Per G. W. MILLER, *D. C.*

Marshal's return.

26th October, 1840. Made on this fi. fa., of the furniture of H. McNeill, $242 30, which is retained, to be applied by the court to the vend. exp's, Nos. 179, 507, and 190.

WM. M. GWIN, *Marshal.*
By E. H. GREER, *Dep.*

And afterwards, to wit, on the 25th day of January, in the year of our Lord one thousand eight hundred and forty-one, the following writ of pluries fi. fa. issued against the principal and sureties in the forthcoming bond, according to the statute in such cases made and provided, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The president of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas, at the May term, 1839, of the circuit court of the United States, for said district, Samuel Jones and James Jones (under the firm of Talbot, Jones & Co.) recovered judgment against Hector McNeill, for the sum of twenty-seven hundred and one $\frac{72}{100}$ dollars, with interest thereon, at the rate of 8 per centum per annum, from the 16th day of May, A. D. 1839, until paid, together with costs and charges by said plaintiffs in and about their said suit in that behalf expended, whereof the said defendant was convicted, as appears to us of record. And whereas, on the 22d day of June, A. D. 1839, an execution of fieri facias issued from our said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs as aforesaid, which execution was levied on certain property of said defendant, which was suffered to remain in possession of said defendant, upon executing a forthcoming bond according to law, with James J. Chewning and D. M. Porter as security; which said bond was returned to our said court at the November term thereof, A. D. 1839, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment according to the statute in such case made and provided, as well against the said sureties as against the defendant to said original execution for said debt, interest, and costs. Now, therefore, you are hereby commanded, as often before, &c., that of the goods and chattels, lands and tenements, of the said Hector McNeill, James J. Chewning, and D. M. Porter, late of your district, you cause to be made the amount of said judgment, interest, and costs so recovered as aforesaid; also the sum of three .83⅓ dollars, including the costs accrued since the emanation of said execution; and that you have the said sums of money before our said circuit court, at a term to be held on the first Monday of May next, to render to said plaintiffs, and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of November,

A. D. 1846, and in the 65th year of the independence of the United States.

Issued the 25th day of January, A. D. 1841.

WM. BURNS, *Clerk*.
Per W. H. BROWN, *D. C.*

Endorsement.

No security of any kind is to be taken.

WM. BURNS, *Clerk*.

Marshal's return.

Made on this fi. fa. $119 90; from sale of land applied to cost in this case, $18 83; to cost in No. 529, $42 02; to cost in vend. exp's, No. 510, $12 83; leaving $36 22 to be applied by the court. Nothing else found in my district.

WM. M. GWIN, *Late Marshal*.
Per E. H. GREER, *Dep*.

$189 of the money made off of Chewning's land, sold in this case and others, is applied to this case; $130 of which I paid to W. H. and A. M. Paxton, on an order from Coombs and Coons.

F. S. HUNT.

4 November, 1840.

Record.

W. and H. MASSINGILL,
vs.
HECTOR MCNEILL.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, at the town of Jackson, at the May term, in the year of our Lord one thousand eight hundred and thiry-nine.

Be it remembered, that heretofore, to wit, on the 13th day of April, A. D. 1838, William and Henry Massingill, plaintiffs, by Pryor Lea, their attorney, filed their declaration herein against Hector McNeill, defendant, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Ninth judicial circuit, Mississippi district.

For the May term, 1838, of the circuit court.

William Massingill and Henry Massingill, partners in trade by the style of William and Henry Massingill, who are citizens of the State of Tennessee, by attorney, complain of Hector McNeill, who is a citizen of the State of Mississippi, summoned by the marshal, &c., of a plea of trespass on the case in assumpsit, for that whereas, on the 1st day of January, 1837, at Vicksburg, which is in the State of Mississippi, the defendant made his certain bill single in writing, with his name

thereunto subscribed, bearing date the same day and year last aforesaid, (written January 1st, 1837,) and directed said bill to N. and E. Ford & Co., New Orleans, being a certain firm of persons known to be trading by that name in the city of New Orleans aforesaid, which is in the State of Louisiana, and thereby requested the said N. and E. Ford & Co., fourteen months after date of that his first of exchange, second of same tenor and date unpaid, to pay to David M. Porter, by the name of D. M. Porter, or order, three thousand three hundred and eighty-three $\frac{1}{100}$ dollars, value received, and delivered said bill to said David M. Porter, by whom. afterwards, to wit, on the same day and year last aforesaid, to wit, in the district aforesaid, the said bill was endorsed, and by that endorsement appointed the money in said bill specified to be paid to Ford, Markham & Co., and delivered said bill, so endorsed, to said Ford, Markham & Co., by whom, afterwards, to wit, on the same day and year last aforesaid, at, to wit, in the district aforesaid, the same bill was, in like manner, endorsed and delivered to the plaintiffs, by which the money in said bill mentioned was appointed to be paid to said plaintiffs according to the tenor and effect thereof; of which said several endorsements the said N. and E. Ford & Co., afterwards, to wit, on *on* the day and year last aforesaid, to wit, in the district aforesaid, had notice; and the plaintiffs aver that before said bill became due and payable, to wit, on the day of , 1837, at New Orleans, to wit, in the district aforesaid, the bill was shown and presented to said N. and E. Ford & Co., for their acceptance thereof; and that they then and there accepted the same according to the tenor and effect thereof; and that afterwards, when said bill became due and payable, to wit, on the 13th day of March, 1838, at New Orleans, to wit, in the district aforesaid, the same bill was shown and presented to said N. and E. Ford & Co., for payment thereof, and they were requested to pay the same according to the tenor and effect thereof, and after endorsement and acceptance aforesaid; but that the said N. and E. Ford & Co. did not, when said bill was so presented for payment, or at any other time, pay the money therein mentioned, or any part thereof, to the plaintiffs, and therein wholly made default; of all which the said defendant, afterwards, to wit, on the same day and year last aforesaid, had notice, at, to wit, in the district aforesaid; and, by reason of the premises, the defendant became liable to pay the plaintiff the said moneys in the bill mentioned whenever he should be thereunto afterwards requested; and, being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at, to wit, in the district aforesaid, undertook and promised the plaintiffs to pay them the said moneys whenever he should be thereunto afterwards requested. Yet the said defendant has not paid the plaintiffs said moneys, or any part thereof, although often requested so to do, but to pay the same has hitherto wholly failed and refused, and still refuses, to the damage of the plaintiffs of five thousand dollars. Wherefore he sues, &c.

P. LEA, *Attorney*.

And afterwards, to wit, on the 14th day of July, A. D. 1838, the following alias writ of summons ad respondendum issued out of the clerk's office of the court aforesaid, in the words and figures, to wit, (the original writ having been returned "not executed."

UNITED STATES OF AMERICA,
District of Mississippi:

The President of the United States, to the marshal of the Mississippi district, greeting:

We command you, as before we commanded you, without delay, to summon Hector McNeill, a citizen of the State of Mississippi, that he be and appear before the circuit court of the United States, to be held at the town of Jackson, in and for the district of Mississippi, on the first Monday of November next, to answer to William Massingill and Henry Massingill, partners under the firm of William and Henry Massingill, citizens of the State of Tennessee, of a plea of trespass on the case to their damage five thousand dollars; and that he do file his plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against him by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Su-
[L. S.] preme court of the United States, the 4th day of July, A. D. 1838, and of the independence of the United States the 63d.

WM. BURNS, *Clerk*.

Marshal's return.—Executed July 19, 1838.

WM. M. GWIN, *Marshal*.
Per B. EMERY, *Deputy*.

And the said defendant, by his attorney, comes and defends the wrong and injury, when and where, &c., and for plea says, he did not undertake and promise in manner and form as the said plaintiffs have, in their declaration, above complained against him; and of this he puts himself on the country.

GARRETT & MITCHELL,
For defendant.

Afterwards, to wit, at the said May term of the said court, to wit, on the twenty-first day of May, in the year of our Lord one thousand eight hundred and thirty-nine, until which term this cause was legally continued, came the parties aforesaid, by their respective attorneys; and the said defendant, hereby relinquishing and waiving his plea by him above pleaded, says, he cannot deny the action of the plaintiffs above thereof against him, whereby the same remains wholly undefended.

Therefore, it is considered by the court, that the said William and Henry Massingill, plaintiffs, recover of the said Hector McNeill, defendant, the sum of three thousand seven hundred and sixteen dollars and forty-three cents, for their damages which they have sustained by reason

of the premises, and also their costs and charges by them about their suit in this behalf expended.

And the said defendant in mercy, &c.

And afterwards, to wit, on the 5th day of July, in the year of our Lord one thousand eight hundred and thirty-nine, the following execution of fieri facias issued out of the clerk's office of said court, by virtue of the foregoing judgment, in the words and figures, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Mississippi:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you that, of the goods and chattels, lands and tenements, of Hector McNeill, late of your district, you cause to be made the sum of three thousand seven hundred and sixteen $\frac{43}{100}$ dollars, which William Massingill and Henry Massingill, lately in our circuit court for the district aforesaid, have recovered against him for their damages which they have sustained by reason of the non-performance of a certain promise and assumption by the said Hector McNeill to the said William and Henry Massingill lately made, with interest on said sum at 8 per centum per annum from the 21st day of May, 1839, until paid; also the sum of forty-nine $\frac{85}{100}$ dollars for costs by them about their suit in that behalf expended, whereof the said Hector McNeill is convicted, as appears to us of record; and that you have said moneys before the judges of our said court on the first Monday of November next, to render to said plaintiffs for their damages and costs aforesaid; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of May, A. D. one thousand eight hundred and thirty-nine, and in the 63d year of the independence of the United States.

Issued the 5th day of July, 1839.

WM. BURNS, *Clerk*.

Marshal's return.

October 4th, 1839. I then levied this fi. fa. on Rolly, Bill, Moses, and Mary Ann, negro slaves, and took a bond with John S. Gooch and James J. Chewning as security, which bond is this day forfeited.

WM. M. GWIN, *Marshal*.
By E. H. GREER, *Deputy*.

Forthcoming bond.

Know all men by these presents, that we, Hector McNeill, John S. Gooch, and James J. Chewning, are held and firmly bound unto William Massengill and Henry Massengill, in the just and full sum of seven thousand five hundred and thirty-one dollars, lawful money of the United States, to be paid to the said William Massengill and Henry

Massengill, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fourth day of October, eighteen hundred and thirty-nine.

The condition of this obligation is such, that, whereas the said William and Henry Massengill have sued out of the circuit court of the United States, for the southern district of Mississippi, a writ of fieri facias against the goods and chattels, lands and tenements, of the above bound Hector McNeill, for the sum of thirty-seven hundred and sixteen dollars and forty-three cents, with interest thereon from the 21st day of May, eighteen hundred and thirty-nine, on said sum, at the rate of 8 per centum per annum until paid; and the further sum of forty-nine dollars and twenty-five cents, for the costs incurred thereon; which writ of fieri facias has been levied by the marshal of said district, upon the following described property, viz: Rolly, Bill, Moses, and Mary Ann, the property of said Hector McNeill; which said property is suffered to remain in the possession of the above bound Hector McNeill, upon his executing this bond with the above named Gooch and J. J. Chewning, sureties thereon; and the said defendant and sureties agree that said property shall be delivered and sold in the city of Jackson, at the front door of the State-house.

Now, if the above bound Hector McNeill shall well and truly deliver the said property to William M. Gwin, marshal of the district aforesaid, at the front door of the State-house, in the city of Jackson, on the 4th day of November next ensuing, by twelve o'clock noon of that day, to be disposed of according to law, in discharge of the aforesaid writ of fieri facias, then, and in that case, the above obligation to be null and void, otherwise to remain in full force and virtue.

H. McNEILL, [SEAL.]
J. S. GOOCH, [SEAL.]
JAS. J. CHEWNING. [SEAL.]

And afterwards, to wit, on the 20th day of December, in the year of our Lord one thousand eight hundred and thirty-nine, the following execution of fieri facias issued out of the clerk's office of said court against the principal and securities in the said forthcoming bond, according to the statute in such case made and provided, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas, at the May term, 1839, of the circuit court of the United States for said district, William Massingill and Henry Massingill recovered judgment against Hector McNeill, for the sum of thirty-seven hundred and sixteen $\frac{43}{100}$ dollars, with interest thereon at the rate of 8

per centum per annum from the 21st day of May, A. D. 1839, until paid, together with costs and charges by said plaintiffs in and about their said suit in that behalf expended, whereof the said defendant was convicted, as appears to us of record. And whereas, on the 5th day of July, A. D. 1839, an execution of fieri facias issued from our said court, directed to the marshal of said district for the amount of said judgment, interest, and costs as aforesaid, which execution was levied on certain property of said defendant, which said property was suffered to remain in possession of said defendant, upon executing a forthcoming bond, according to law, with John S. Gooch and James J. Chewning as security; which said bond was returned to our said court at the November term thereof, A. D. 1839, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment according to the statute in such case made and provided, as well against the said sureties as against the defendant to said original execution, for said debt, interest, and costs. Now, therefore, you are hereby commanded, that of the goods and chattels, lands and tenements, of the said H. McNeill, J. S. Gooch, and J. J. Chewning, late of your district, you cause to be made the amount of said judgment, interest, and costs so recovered as aforesaid; also, the sum of ninety-eight .23½ dollars, including the costs accrued since the emanation of said execution; and that you have the said sums of money before our said circuit court at a term to be held on the first Monday of May next, to render to said plaintiffs, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of November, A. D. 1839, and in the 64th year of the independence of the United States.

Issued 20th day of December, 1839. WM. BURNS, *Clerk*.

Endorsement.

No security of any kind is to be taken. WM. BURNS, *Clerk*.

Marshal's return.

Levied on Tom, negro slave, and Harriet. Not sold for want of time.
WM. M. GWIN, *Marshal*.
Per E. H. GREER, *Deputy*.

And afterwards, to wit, on the 25th day of May, in the year of our Lord one thousand eight hundred and forty, the following writ of venditioni exponas issued from the clerk's office of said court, against the principal and securities in the forthcoming bond, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, that you expose to sale these goods and chattels of Hector McNeill, principal, and J. S. Gooch and J. J. Chewning,

sureties, consisting of the following negro slaves, to wit: Tom and Harriet, which, according to our command, you have taken, and which remain in your hands unsold, as you have certified to the judges of our circuit court for the southern district of Mississippi, to satisfy William Massingill and Henry Massingill, the sum of thirty-seven hundred and sixteen $\frac{43}{100}$ dollars, with interest on the same at the rate of 8 per centum per annum from the 21st day of May, 1839, until paid; and the sum of one hundred and eleven .21$\frac{1}{3}$ dollars for costs and charges by them in that behalf expended, whereof the said William and Henry Massingill have recovered execution against the said McNeill, Gooch, and Chewning, by virtue of a certain judgment in our said circuit court, and that you have the said moneys before the judges of our circuit court, at a court to be held at Jackson, in and for the district aforesaid, on the first Monday of November next, to render to said plaintiffs; and have you then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of May, A. D. one thousand eight hundred and forty, and in the 64th year of the independence of the United States.

Issued the 25th day of May, 1840.

WM. BURNS, *Clerk*.
Per SAM. LAUGHMAN, *D. C.*

Endorsement.

No security of any kind is to be taken.

WM. BURNS, *Clerk*.

Marshal's return.

Sold negroes Harriet and Tom to A. J. Paxton for $975 00; made of the household furniture of H. McNeill $242 50; on fi. fa. No. 1426, applied to cost in number 179, $75 43; No. 507, $92 12; No. 189, $240 62; and to the cost in this case, No. 190, $115 50; leaving to be applied by the court in this case, and No. 189 and 507, the sum of $693 77.

W. M. GWIN, *Marshal*.
By E. M. GREER, *Dep*.

And afterwards, to wit, on the 14th day of January, in the year of our Lord one thousand eight hundred and forty-one, the following alias writ of fieri facias, issued out of the clerk's office of said court against the principal and securities in the forthcoming bond, according to the statute in such case made and provided, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

Whereas, at the May term, 1839, of the circuit court of the United States for said district, William Massingill and Henry Massingill re-

covered judgment against Hector McNeill, for the sum of thirty-seven hundred and sixteen $\frac{43}{100}$ dollars, with interest thereon at the rate of 8 per centum per annum, from the 21st day of May, A. D. 1839, until paid, together with costs and charges by said plaintiffs in and about their said suit in that behalf expended, whereof the said defendant was convicted, as appears to us of record. And whereas, on the 5th day of July, A. D. 1839, an execution of fieri facias issued from our said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs as aforesaid, which execution was levied on certain property of said defendant, which said property was suffered to remain in possession of said defendant, upon executing a forthcoming bond, according to law, with Jno. S. Gooch and James J. Chewning as security, which said bond was returned to our said court at the November term thereof, A. D. 1839, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties as against the defendant to said original execution for said debt, interest, and costs. Now, therefore, you are hereby commanded, as before, &c., that of the goods and chattels, lands and tenements, of the said Hector McNeill, Jno. S. Gooch, and J. J. Chewning, late of your district, you cause to be made the amount of said judgment, interest, and costs, so recovered as aforesaid; also the sum of three .83⅓ dollars, including the costs accrued since the emanation of said execution; and that you have the said sums of money before our said circuit court, at a term to be held on the first Monday of May next, to answer to said plaintiffs, and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of November, A. D. 1840, and in the 65th year of the independence of the United States.

Issued the 14th day of January, 1841.

WM. BURNS, *Clerk*.
Pr. W. H. BROWN, *D. C.*

Endorsement.

No security of any kind to be taken. WM. BURNS, *Clerk*.
Pr. W. H. BROWN, *D.*

Marshal's return.

Came to hand 10th February, 1841. No property found.
ADOLPHUS G. WIER.
By RO. WIER, *Deputy*.

And afterwards, to wit, on the 17th day of January, in the year of our Lord one thousand eight hundred and forty-four, the following pluries writ of fieri facias issued out of the clerk's office of said court, against the principal and sureties in the forthcoming bond in this case, according to the statute in such case made and provided, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

Whereas, at the May term, 1839, of the circuit court of the United States for said district, William Massingill and Henry Massingill recovered judgment against Hector McNeill, for the sum of twenty-seven hundred and sixteen $\frac{4}{100}$ dollars, with interest thereon, at the rate of 8 per centum per annum, from the 21st day of May, A. D. 1839, until paid, together with costs and charges by said plaintiffs in and about their said suit in that behalf expended, whereof the said defendant was convicted, as appears to us of record. And whereas, on the 5th day of July, A. D. 1839, an execution of fieri facias issued from the said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs, as aforesaid, which execution was levied on certain property of said defendant, which said property was suffered to remain in possession of said defendant, upon executing a forthcoming bond, according to law, with Jno. S. Gooch and J. J. Chewning as security, which said bond was returned to our said court at the November term thereof, A. D. 1839, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties as *as* against the defendant to said original execution, for said debt, interest, and costs.

Now, therefore, you are hereby commanded, as often before, &c., that of the goods and chattels, lands and tenements, of *of* the said Hector McNeill, Jno. S. Gooch, and J. J. Chewning, late of your district, you cause to be made the amount of said judgment, interest, and costs, so recovered as aforesaid. Also the sum of fifteen .66$\frac{2}{3}$ dollars, including the costs accrued since the emanation of said execution; and that you have the said sums of money before our said circuit court, at a term to be held on the first Monday of May next, to render to said plaintiff, and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of November, A. D. 1843, and in the 68th year of the independence of the United States.

Issued the 17th day of January, 1844.

W. H. BROWN, *Clerk*.

Endorsement.

No security of any kind is to be taken.

W. H. BROWN, *Clerk*.

Marshal's return.

Received April 27, 1844. Nulla bona.

A. K. McCLUNG,
Marshal northern dist. Miss.
By SAM. W. CARR, *D. M.*

Record.

R. M. PATTON,
vs.
ATHERTON and HARVEY.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, at the May term, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore, to wit, on the fifth day of April, A. D. 1838, the following writ of summons ad respondendum issued out of the clerk's office of the court aforesaid, in these words and figures, to wit:

UNITED STATES OF AMERICA,
District of Mississippi:

The President of the United States, to the marshal of the Mississippi district, greeting:

We command you without delay to summon *to summon* George Atherton and William Harvey, citizens of the State of Mississippi, late partners under the firm of Atherton and Harvey, that they be and appear before the circuit court of the United States, to be held at the town of Jackson, in and for the district of Mississippi, on the first Monday in May next, to answer to Robert M. Patton, a citizen of the State of Alabama, of a plea of trespass on the case to his damage eight thousand dollars; and that they do file their plea or defence, or judgment will be given against them by default, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the fifth day of April, A. D. 1838, and of the independence of the United States the 62d. [L. S.]

WM. BURNS, *Cl'k.*

Marshal's return, executed on George Atherton and William Harvey, April 8th, 1838.

WM. M. GWIN, *Marshal.*
Per B. EMORY, *Dep'ty.*

And on the said 5th day of April, A. D. 1838, the said plaintiff, by Taylor and Tarpley, his attorneys, filed his declaration herein against the said defendants in the following words and figures, to wit:

UNITED STATES OF AMERICA,
District of Mississippi:

Circuit court, May term, 1838.

R. M. Patton, who is a citizen of the State of Alabama, by attorney, complains of George Atherton and William Harvey, citizens of the State

of Mississippi, and partners trading under the name of Atherton and Harvey, in custody, &c., of a plea of trespass on the case, on promises, for that whereas, heretofore, to wit, on the 24th day of November, eighteen hundred and thirty-six, at Vicksburg, to wit, at the district aforesaid, according to the usage and custom of merchants, one William Harvey, by the name and description of W. Harvey, made his certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bill of exchange to Atherton and Harvey, the said defendants, by the description of Atherton and Harvey, Vicksburg, to wit, in the district aforesaid, by which said bill of exchange he, the said Harvey, then and there requested the said Atherton and Harvey, twelve months after date, to pay of that first of exchange, (second unpaid) to pay to A. B. Reading, or order, the sum of three thousand dollars, value received, and then and there delivered the said bill of exchange to said A. B. Reading, which said bill of exchange the said defendants, by the name and style of Atherton and Harvey aforesaid, afterwards, to wit, on the day and year aforesaid, to wit, in the district aforesaid, upon sight thereof accepted, payable at the Citizens' Bank, New Orleans, according to said usage and custom of merchants; and the said A. B. Reading, to whom or to whose order the payment of the said sum of money in the said bill of exchange was to be made, after the making of the said bill of exchange, and before the payment of the said sum of money therein specified, to wit, on the day and year last aforesaid, at the district aforesaid, according to the said usage and custom of merchants, by the name of Abm. B. Reading, endorsed the said bill of exchange, by which said endorsement, he, the said A. B. Reading, then and there ordered and appointed the said sum of money, in the said bill of exchange specified, to be paid to the said plaintiff's order, by the name and description of R. M. Patton, and then and there delivered the said bill of exchange, so endorsed, to the said plaintiff. And the said plaintiff avers that New Orleans, the place where said bill of exchange was to be paid according to the acceptance was, at the time said bill of exchange was drawn, and now is, in the State of Louisiana, and out of the State of Mississippi, to wit, *to wit*, in the district aforesaid; by means whereof, and according to said usage and custom of merchants, the said defendants then and there became liable to pay to the said plaintiff the said sum of money in the said bill of exchange specified, according to the tenor and effect of said bill of exchange; and being so liable they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay *them* the said sum of money in the said bill of exchange specified, according to the tenor and effect of the same, and of their acceptance so made thereon as aforesaid. And for that the said defendants, at the district aforesaid, on the day and year last aforesaid, being indebted to the said plaintiff in the further sum of five thousand dollars, for money by the said defendants before that time had and received to and for the use of the

said plaintiff, and also for the money by the said plaintiff before that time paid, laid out, and expended, to and for the said defendants at their special instance and request, and also for other money by the said plaintiff lent and advanced to the said defendants, and at their like instance and request, in consideration thereof, undertook, and then and there faithfully promised the said plaintiff, to pay him the same when they should be thereunto afterwards requested; yet the said defendants have disregarded their said promises and undertakings, and have not, nor have any of the parties to said bill of exchange, or either of them, ever paid the said several sums of money in this declaration mentioned, or either of them, or any part thereof, although often requested so to do, but the same to pay, or any part thereof, have hitherto wholly failed and refused, and still do fail and refuse, to the plaintiff's damage eight thousand dollars; and wherefore he brings his suit, &c.

TAYLOR AND TARPLEY,
Attorneys for the plaintiff.

And the said defendants come and defend the wrong and injury, when and where, and for plea say, they did not undertake and promise in manner and form as the said plaintiff hath thereof declared against *him;* and of this they put themselves upon the country.

HARRISON & HOLT,
Defendants' attorneys.

And the plaintiff doth the like.

TAYLOR & TARPLEY, *Atto's.*

Afterwards, to wit, at the said May term of the court aforesaid, to wit, on the twentieth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, (until which time this cause was legally continued,) came the parties aforesaid, by their respective attorneys, and a jury being called came, to wit, D. N. Barrows, S. M. Lockhart, D. C. Hardie, J. M. White, Philip Poindexter, Thomas Johnson, J. H. W. Dearing, Thomas Gordon, Thomas States, James M. Lewis, William Ochiltree, and Alexr. Montgomery, who being empannelled, tried, and sworn to speak the truth concerning the matters within contained, say, upon their oath, that the said defendants did undertake and promise in manner and form as the said plaintiff hath thereof declared against him; and assess the damages, by reason of the premises, to five thousand five hundred dollars.

Therefore, it is considered by the court, that the said Robert M. Patton, plaintiff, recover against the said Atherton and Harvey, defendants, the said sum of five thousand five hundred dollars for his damages aforesaid by the said jurors in form aforesaid assessed, and also his costs and charges by him about his suit in this behalf expended. And the said defendants in mercy, &c.

And afterwards, to wit, on the 5th day of July, in the year of our Lord, one thousand eight hundred and thirty-nine, the following exe-

cution of fieri facias issued out of the clerk's office of the court aforesaid, by virtue of the foregoing judgment, in the words and figures, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Mississippi:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements, of George Atherton and William Harvey, late of your district, you cause to be made the sum of five thousand five hundred dollars, which Robert M. Patton, lately, in our circuit court, for the district aforesaid, recovered against them for his damages which he has sustained by reason of the non-performance of a certain promise and assumption, by the said Atherton and Harvey to the said Robert M. Patton lately made, with interest on said sum at 8 per centum per annum from the 20th day of May, 1839, until paid; also the sum of forty-six .16⅔ dollars costs by him about his suit in that behalf expended, whereof the said Atherton and Harvey are convicted, as appears to us of record. And that you have said moneys before the judges of our said court on the first Monday of November next, to render unto the said plaintiff for his damages and costs aforesaid. And have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court, at Jackson, the first Monday of May, A. D. one thou-
[L. S.] sand eight hundred and thirty-nine, and in the 63d year of the independence of the United States.

Issued the 5th day of July, 1839.

WM. BURNS, *Cl'k.*

Marshal's return.

9th September, 1839. I then levied this fi. fa. on Patty, Patsey, Tom, Will, Willis, and Leonard, and took a bond with Abn. B. Reading and James J. Chewning as security, which bond is this day forfeited; 4th Nov., 39.

W. M. GWIN, *Marshal.*
By E. H. GREER,
His deputy.

Forthcoming bond.

Know all men by these presents, that we, George Atherton and William Harvey, late partners under the firm of Atherton and Harvey, and A. B. Reading, and J. J. Chewning, are held and firmly bound, unto Robert M. Patton, in the just and full sum of eleven thousand and ninety-two dollars and sixty-two cents, lawful money of the United States, to be paid to the said Robert M. Patton, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, our executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 19th day of September, eighteen hundred and thirty-nine.

The condition of this obligation is such, that whereas the said Robert M. Patton has sued out of the circuit court of the United States, for the southern district of Mississippi, a writ of fieri facias, against the goods and chattels, lands and tenements, of the above bound Atherton and Harney, for the sum of five thousand and five hundred dollars, with interest thereon from the 20th day of May, eighteen hundred and thirty-nine, on said sum at the rate of 8 per centum per annum until paid, and the further sum of forty-six .16⅔ dollars, for costs incurred therein; which writ of fieri facias has been levied by the marshal of said district upon the following described property, to wit, six negro slaves, Patsey, Patty, Tom, Will, Willis, and Leonard, the property of the said Atherton and Harvey, which said property is suffered to remain in possession of the above bound Atherton and Harvey upon their executing this bond, with the above named A. B. Reading and James J. Chewning sureties therein; and the said defendants and sureties agree that said property shall be delivered and sold, in the city of Jackson, at the front door of the State-house.

Now, if the above bound Atherton and Harvey do, and shall, well and truly deliver the said property to William M. Gwin, marshal of the district aforesaid, at the front door of the State-house, in the city of Jackson, on the 4th day of November next ensuing, by twelve o'clock noon of that day, to be disposed of according to law, in discharge of the aforesaid writ of fieri facias, then, and in that case, the above obligation to be null and void, otherwise to remain in full force and virtue.

GEO. F. ATHERTON, [SEAL.]
W. HARVEY, [SEAL.]
A. B. READING, [SEAL.]
JAS. J. CHEWNING. [SEAL.]

And afterwards, to wit, on the 5th day of July, in the year of our Lord one thousand eight hundred and forty-three, the following execution of fieri facias issued out of the clerk's office of the court aforesaid, against the principal and sureties in the forthcoming bond in this case, according to the statute in such case made and provided, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas, at the May term, 1839, of the circuit court of the United States, for said district, Robert Patton recovered judgment against George Atherton and William Harvey, under the firm of Atherton & Harvey, for the sum of five thousand five hundred dollars, with interest thereon at the rate of 8 per centum per annum, from the 20th day of May, A. D. 1839, until paid, together with costs and charges by said plaintiff in and about his suit in that behalf expended, whereof the said defendants were convicted, as appears to us of record. And whereas,

on the 5th day of July, A. D. 1839, an execution of fieri facias issued from said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs as aforesaid, which execution was levied upon certain property of said defendants, which said property was suffered to remain in possession of said defendants upon executing a forthcoming bond, according to law, with A. B. Reading and James J. Chewning as security, which said bond was returned to our said court at the November term thereof, A. D. 1839, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties as against the defendants to said original execution, for said debt, interest, and costs.

Now, therefore, you are hereby commanded, that of the goods and chattels, lands and tenements, of Geo. Atherton, Wm. Harvey, A. B. Reading, and James J. Chewning, late of your district, you cause to be made the amount of said judgment, interest, and cost so recovered as aforesaid; also the sum of one hundred and fourteen $\frac{96}{100}$ dollars, including the costs accrued since the emanation of said execution; and that you have the said sums of money before our said circuit court, at a term to be held on the first Monday of November next, to render to the said plaintiff, and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of May, A. D. 1843, and in the 67th year of the independence of the United States.

Issued the 5th of July, 1843.

W. H. BROWN, *Clerk*.

Endorsement.

No security of any kind is to be taken.

W. H. BROWN, *Clerk*.

Marshal's return.

See returns on number two hundred and thirty-three, (233,) R. M. Patton vs. A. B. Reading and sureties, to November term, 1843. Costs in this case satisfied as per said return. AND. MILLER, *Marshal*.

By N. G. WATTS, *Dep*.

And afterwards, to wit, on the 29th day of November, in the year of our Lord one thousand eight hundred and forty-three, the following alias execution of fieri facias, issued out of the clerk's office of the court aforesaid, against the principal and sureties in the forthcoming bond in this case, according to the statute in such case made and provided, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas, at the May term, 1839, of the circuit court of the United States, for said district, Robert M. Patton recovered judgment against

George Atherton and William Harvey, under the firm of Atherton & Harvey, for the sum of five thousand five hundred dollars, with interest thereon at the rate of 8 per centum per annum from the 20th day of May, A D. 1839, until paid, together with costs and charges by said plaintiff in [and] about his said suit in that behalf expended, whereof the said defendants were convicted, as appears to us of record. And whereas, on the 5th day of July, A. D. 1839, an execution of fieri facias issued from our said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs as aforesaid, which execution was levied on certain property of said defendants, which said property was suffered to remain in possession of said defendants upon executing a forthcoming bond, according to law, with A. B. Reading and James J. Chewning as security; which said bond was returned to our said court, at the November term thereof, A. D. 1839, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties as against the defendant to said original execution for said debt, interest, and costs. Now, therefore, you are hereby commanded, as often before, &c., that of the goods and chattels, lands and tenements, of the said Geo. Atherton, Wm. Harvey, A. B. Reading, and J. J. Chewning, late of your district, you cause to be made the amount of said judgment, interest, and costs so recovered as aforesaid; also the sum of three .83⅓ dollars, including the costs accrued since the emanation of said execution; and that you have the said sums of money before our circuit court, at a term to be held on the first Monday of May next, to render to said plaintiff, and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of November, A. D. 1843, and in the 68th year of the independence of the United States. [L. S.]

Issued the 29th day of November, 1843.

W. H. BROWN, *Clerk*.
Per C. H. ROGERS, *D. C.*

Endorsement.

No security of any kind is to be taken.

W. H. BROWN, *Clerk*.
Per C. H. ROGERS, *D. C.*

Marshal's return.

See return on No. 31, to May term, 1844.

A. MILLER, *Marshal*.
By N. G. WATTS, *Dep.*

And afterwards, to wit, on the 13th day of December, in the year of our Lord one thousand eight hundred and forty-four, the following writ of venditioni exponas issued out of the clerk's office of the court afore-

said, against the principals and sureties in the forthcoming bond in this case, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you that you expose to sale those goods and chattels, lands and tenements, of George Atherton and William Harvey, principals, and A. B. Reading and James J. Chewning, sureties, (viz:) the following described land in Washington county, to wit: sections 7, 32, 30, 19, and 18, lots 3, 4, and 5, section 31, all in township 19, range 6 west, W. ½ S. E. ¼ section 5, township 18, range 6 west, containing in all 3,783 acres, more or less, which, according to our command, you have taken, and which remain in your hands unsold, as you have certified to the judges of our circuit court, for the southern district of Mississippi, to satisfy Robert M. Patton the sum of five thousand five hundred dollars, with interest on the same, at the rate of 8 per centum per annum, from the 20th day of May, 1839, until paid, and the sum of seven .66⅔ dollars for costs and charges by him in that behalf expended, whereof the said plaintiff has recovered execution against the said defendants by virtue of a certain judgment in our said circuit court; and that you have the said moneys before the judges of our circuit court, at a court to be held at Jackson, in and for the district aforesaid, on the first Monday of May next, to render to said plaintiff, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of [L. S.] November, A. D. one thousand eight hundred and forty-four, and in the 69th year of the independence of the United States.

Issued the 13th day of December, A. D. 1844.

W. H. BROWN, *Clerk*.
Per C. H. ROGERS, *D. C.*

Endorsement.—No security of any kind is to be taken.

W. H. BROWN, *Clerk*.

Marshal's return.

See return on No. 44, to May term, 1845.

A. MILLER, *Marshal*.
By N. G. WATTS, *Dep.*

And afterwards, to wit, on the 2d day of June, in the year of our Lord one thousand eight hundred and forty-five, the following pluries writ of fieri facias issued out of the clerk's office of the court aforesaid against the principals and sureties on the forthcoming bond in this case, according to the statute in such case made and provided, in the words and figures to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas, at the May term, 1839, of the circuit court of the United States for said district, Robert M. Patton recovered judgment against George Atherton and William Harvey (under the firm of Atherton and Harvey) for the sum of five thousand five hundred dollars, with interest thereon, at the rate of 8 per centum per annum, from the 20th day of May, A. D. 1839, until paid, together with costs and charges by said plaintiff in and about his said suit in that behalf expended, whereof the said defendants were convicted, as appears to us of record; and whereas, on the 5th day of July, A. D. 1839, an execution of fieri facias issued from our said court, directed to the marshal of the said district, for the amount of said judgment, interest, and costs as aforesaid, which execution was levied on certain property of said defendants, which said property was suffered to remain in possession of said defendants upon executing a forthcoming bond, according to law, with A. B. Reading and J. J. Chewning as security; which said bond was returned to our said court, at the November term thereof, A. D. 1839, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the sureties as against the defendants to said original execution, for said debt, interest, and costs.

Now, therefore, you are hereby commanded, as very often before, &c., that of the goods and chattels, lands and tenements, of the said George Atherton, Wm. Harvey, A. B. Reading, and J. J. Chewning, late of your district, you cause to be made the amount of said judgment, interest, and costs so recovered as aforesaid; also the sum of three .83½ dollars, including the costs accrued since the emanation of said execution; and that you have the said sums of money before our said circuit court, at a term to be held on the first Monday of November next, to render to said plaintiffs, and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of
[L. S.] May, A. D. 1845, and in the 69th year of the independence of the United States.

Issued the 2d day of June, 1845.

W. H. BROWN, *Clerk*.
Per C. H. ROGERS, *D. C.*

Endorsement.—No security of any kind is to be taken.

W. H. BROWN, *Clerk*.
Per C. H. ROGERS, *D. C.*

Marshal's return.

Nulla bona.

THOS. FLETCHER, *Marshal*.
Per T. FLETCHER, *Deputy*.

The said records were offered in evidence to prove the insolvency of the said Chewning at the time of the execution of the said several mortgages, set forth and contained in the exhibits A, B, C, D, and E, to the deposition of the said Chewning. The defendant, by his counsel, then and there, upon the presentation of said records, objected to the admission of the same as incompetent and irrelevant evidence, and the said objection was overruled and the said evidence admitted; and the said defendant, by his counsel, then and there excepted to the opinion of the court overruling the said objection and admitting said evidence, and then and there tendered this his bill of exceptions. And thereupon the said defendant, by his counsel, offered, and read in evidence to the jury in his behalf, the said twenty-first interrogatory and answer thereto above mentioned as excluded from the jury; and this was all the evidence read or given in said cause on behalf of either of the said parties, plaintiff or defendant.

And thereupon, on the motion of said plaintiff, by his counsel, the court instructed the jury as follows, to wit:

1st. If the jury find that any one of the mortgages conveys more property than would be sufficient to secure the debt provided for in such mortgage, such mortgage is fraudulent; that is, the fact of more property being conveyed in the mortgage than was necessary to secure the debt, is a circumstance from which the jury may presume the mortgage was fraudulent.

2d. If a mortgage is made to cover more property than is sufficient to pay the debt intended to be secured for the purpose of preventing other creditors from levying, it is fraudulent and void, though the debt intended to be secured be bona fide; that is, the fact of more property being conveyed than was necessary to secure the debt is a circumstance from which the jury may infer fraud.

3d. If the jury believe that the object of Chewning was to hinder, delay, or defraud his bona fide creditors by the execution of the mortgages, then the mortgages are void, and the jury should find for the plaintiff in the execution; but, in coming to your conclusion on this subject, you must recollect that Chewning, the defendant in the execution, was authorized to prefer one of his creditors to another, provided his object only was to enable such creditor to collect his debt; he had no right, in enabling one creditor to collect his debt, to give him control of an amount of property much larger than was necessary to pay the debt.

4th. The jury must believe, from the testimony, that the defendant in the execution, Chewning, had title to the property levied on at the time of the rendition of the judgment, or at the time of the levy, in order to enable the plaintiff in the execution to recover. The lien of the judgment would only commence from the time the judgment was enrolled in the county in which the defendant lived.

To all of which said instructions and opinions above noted, the defendant, by his counsel, then and there excepted, and tendered this his bill of exceptions, which is signed, sealed, and ordered to be made a part of the record in this cause, before the jury retired from the bar.

S. J. GHOLSON. [SEAL.]

Be it remembered, that in the case of Joseph Kissam, plaintiff, vs. A. C. Downs, claimant, after the verdict of the jury was rendered in favor of the plaintiff, the defendant, Downs, by attorney, entered a motion for a new trial, because the judge had admitted improper evidence, and had misdirected the jury on the law; and because the verdict was contrary to law and evidence; which motion was argued and submitted to the court, but before the same was decided, the defendant came in and asked for leave to withdraw his motion for a new trial, in order that he might rely in the Supreme Court upon his bill of exceptions, taken to the admission of testimony and the instructions of the court; and the counsel for the plaintiff opposed the withdrawal of said motion for a new trial, and insisted upon the decision of the motion by the court; but the court permitted said motion to be withdrawn, and refused to decide the same; to which action of the court, the plaintiff, by his attorney, excepted, and tendered this his bill of exceptions, which is signed, sealed, and made a part of the record in this cause, which is done accordingly.

S. J. GHOLSON. [SEAL.]

Therefore, it is considered by the court, that the said Joseph Kissam, plaintiff, do have and recover of the said A. C. Downs, claimant, the above named negro slaves, to wit:

Milley, of the value of $425, her child, of the value of $75; Viney, of the value of $425, her child, of the value of $75; Nancy, of the value of $325, her child, of the value of $75; Tempey, of the value of $325, her child, of the value of $75; Mary, of the value of $350; Louisa, of the value of $400; and Charlotte, of the value of $500, or any, or either of them, if to be had; but if all, or either of them, be not had and recovered, the said plaintiff shall have and recover of the said defendant, claimant, as aforesaid, the aggregate value of all of said slaves, or the value of any of said slaves, so not had and recovered; and that the said plaintiff recover of the defendant his cost and charges by him about his suit in this behalf expended; and the said defendant in mercy, &c.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Circuit court, United States.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing eighty-eight pages contain a true and complete transcript of the record of the judgment in the case therein stated, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at Jackson, the 21st day of December, [L. S.] A. D. 1847, and in the 72d year of the independence of the United States of America.

W. H. BROWN, *Clerk*.

The said records were offered in evidence to prove the insolvency of the said Chewning at the time of the execution of the said several mortgages, set forth and contained in the exhibits A, B, C, D, and E, to the deposition of the said Chewning. The defendant, by his counsel, then and there, upon the presentation of said records, objected to the admission of the same as incompetent and irrelevant evidence, and the said objection was overruled and the said evidence admitted; and the said defendant, by his counsel, then and there excepted to the opinion of the court overruling the said objection and admitting said evidence, and then and there tendered this his bill of exceptions. And thereupon the said defendant, by his counsel, offered, and read in evidence to the jury in his behalf, the said twenty-first interrogatory and answer thereto above mentioned as excluded from the jury; and this was all the evidence read or given in said cause on behalf of either of the said parties, plaintiff or defendant.

And thereupon, on the motion of said plaintiff, by his counsel, the court instructed the jury as follows, to wit:

1st. If the jury find that any one of the mortgages conveys more property than would be sufficient to secure the debt provided for in such mortgage, such mortgage is fraudulent; that is, the fact of more property being conveyed in the mortgage than was necessary to secure the debt, is a circumstance from which the jury may presume the mortgage was fraudulent.

2d. If a mortgage is made to cover more property than is sufficient to pay the debt intended to be secured for the purpose of preventing other creditors from levying, it is fraudulent and void, though the debt intended to be secured be bona fide; that is, the fact of more property being conveyed than was necessary to secure the debt is a circumstance from which the jury may infer fraud.

3d. If the jury believe that the object of Chewning was to hinder, delay, or defraud his bona fide creditors by the execution of the mortgages, then the mortgages are void, and the jury should find for the plaintiff in the execution; but, in coming to your conclusion on this subject, you must recollect that Chewning, the defendant in the execution, was authorized to prefer one of his creditors to another, provided his object only was to enable such creditor to collect his debt; he had no right, in enabling one creditor to collect his debt, to give him control of an amount of property much larger than was necessary to pay the debt.

4th. The jury must believe, from the testimony, that the defendant in the execution, Chewning, had title to the property levied on at the time of the rendition of the judgment, or at the time of the levy, in order to enable the plaintiff in the execution to recover. The lien of the judgment would only commence from the time the judgment was enrolled in the county in which the defendant lived.

To all of which said instructions and opinions above noted, the defendant, by his counsel, then and there excepted, and tendered this his bill of exceptions, which is signed, sealed, and ordered to be made a part of the record in this cause, before the jury retired from the bar.

S. J. GHOLSON. [SEAL.]

Be it remembered, that in the case of Joseph Kissam, plaintiff, vs. A. C. Downs, claimant, after the verdict of the jury was rendered in favor of the plaintiff, the defendant, Downs, by attorney, entered a motion for a new trial, because the judge had admitted improper evidence, and had misdirected the jury on the law; and because the verdict was contrary to law and evidence; which motion was argued and submitted to the court, but before the same was decided, the defendant came in and asked for leave to withdraw his motion for a new trial, in order that he might rely in the Supreme Court upon his bill of exceptions, taken to the admission of testimony and the instructions of the court; and the counsel for the plaintiff opposed the withdrawal of said motion for a new trial, and insisted upon the decision of the motion by the court; but the court permitted said motion to be withdrawn, and refused to decide the same; to which action of the court, the plaintiff, by his attorney, excepted, and tendered this his bill of exceptions, which is signed, sealed, and made a part of the record in this cause, which is done accordingly.

S. J. GHOLSON. [SEAL.]

Therefore, it is considered by the court, that the said Joseph Kissam, plaintiff, do have and recover of the said A. C. Downs, claimant, the above named negro slaves, to wit:

Milley, of the value of $425, her child, of the value of $75; Viney, of the value of $425, her child, of the value of $75; Nancy, of the value of $325, her child, of the value of $75; Tempey, of the value of $325, her child, of the value of $75; Mary, of the value of $350; Louisa, of the value of $400; and Charlotte, of the value of $500, or any, or either of them, if to be had; but if all, or either of them, be not had and recovered, the said plaintiff shall have and recover of the said defendant, claimant, as aforesaid, the aggregate value of all of said slaves, or the value of any of said slaves, so not had and recovered; and that the said plaintiff recover of the defendant his cost and charges by him about his suit in this behalf expended; and the said defendant in mercy, &c.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Circuit court, United States.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing eighty-eight pages contain a true and complete transcript of the record of the judgment in the case therein stated, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at Jackson, the 21st day of December, [L. S.] A. D. 1847, and in the 72d year of the independence of the United States of America.

W. H. BROWN, *Clerk*.

Citation.

UNITED STATES OF AMERICA, *ss:*

To Joseph Kissam, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the ninth circuit and southern district of Mississippi, wherein Alfred C. Downs, claimant, is plaintiff, and you are defendant in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States, for the southern district of Mississippi, this twenty-first day of November, in the year of our Lord one thousand eight hundred and forty-six, and in the seventy-first year of the independence of the United States.

S. J. GHOLSON.

Executed on William Yerger, 28th November, 1846.

THOMAS FLETCHER, *Marshal.*
Per RICHARD FLETCHER, *D. Marshal.*

Marshal's fees—Service	$2	00
Copy		50
E. and R.		50
	$3	00

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States, for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Joseph Kissam, plaintiff, vs. Alfred C. Downs, claimant, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspect-

ed, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of
[L. S.] our Lord one thousand eight hundred and forty-five, and of the independence of the United States the 70th.

Issued the 21st day of November, A. D. 1846.

W. H. BROWN, *Clerk*
Ct. Ct. U. S. southern district of Mississippi.

Filed 31st January, 1848.